

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
)	
)	
ROGERS PETROLEUM, INC., JOHN)	
HOWSE, JR., MARY ANNE ODOM,)	
TAMELA HUDDLESTON)	
HOWLAND, and FRANKLIN)	
HUDDLESTON, JR.)	CASE NO. FDA23-0011
)	
)	FACILITY: 96 MARKET
)	
RESPONDENTS)	

ORDER AND ASSESSMENT

NOW COMES, David W. Salyers, P.E., Commissioner of the Department of Environment and Conservation (the "Commissioner"), and states:

PARTIES

I.

David W. Salyers, P.E., is the duly appointed Commissioner of the Department of Environment and Conservation ("Department") and is charged with administering and enforcing the Tennessee Petroleum Underground Storage Tank Act ("Act"), Tenn. Code Ann. §§ 68-215-101 to -129. Stanley R. Boyd is the duly appointed Director ("Director") of the Division of Underground Storage Tanks ("Division") and has received written delegation from the Commissioner to administer and enforce the Act.

II.

Rogers Petroleum, Inc. ("Respondent Rogers Petroleum, Inc.") is a corporation created in Tennessee and is properly registered to conduct business in Tennessee. The Respondent is the registered tank owner of three underground storage tank ("UST") systems located at 3299 Lascassas Pike, Murfreesboro, Rutherford County, Tennessee 37130. Service of process may be made on the Respondent's Registered Agent, Christopher P. Liposky, at 1634 West 1st North Street, Morristown, Tennessee 37814.

John Howse, Jr. ("Respondent Howse"), Mary Anne Odom ("Respondent Odom"), Franklin Huddleston, Jr. ("Respondent Huddleston"), Tamela Huddleston Howland ("Respondent Howland"), and Franklin Huddleston, Jr. ("Respondent Huddleston") are individuals and the joint owners of the property that contains the three UST systems located at 3299 Lascassas Pike, Murfreesboro, Tennessee 37130. Service of process may be made on Respondent Howse at 3101 Lascassas Pike, Murfreesboro, Tennessee 37130. Service of process may be made on Respondent Odom at 6946 Old Highway 96, Lascassas, Tennessee 37085. Service of process may be made on Respondent Howland at 4317 Betty Ford Road, Murfreesboro, Tennessee 37130. Service of process may be made on Respondent Huddleston at 3203 Meadow Lane, Murfreesboro, Tennessee 37130.

JURISDICTION

III.

When the Commissioner finds upon investigation that any provision of the Act is not being carried out, and that effective measures are not being taken to comply with the provisions of the Act, the Commissioner may issue an Order for correction to the responsible party, and this Order shall be complied with within the time limit specified in the Order. Tenn. Code Ann. § 68-215-114. If this Order becomes final, the Commissioner may affix a notice of petroleum delivery prohibition ("red tag") to the facility fill ports and/or dispensers and give notice on the Department's website of petroleum delivery prohibition. Tenn. Code Ann. § 68-215-106(c). Further, the Commissioner is authorized to assess civil penalties against any person who violates or fails to comply with the Act. Tenn. Code Ann. § 68-215-121. Rules governing USTs have been promulgated pursuant to Tenn. Code Ann. § 68-215-107(f) and are effective as Tenn. Comp. R. & Regs. 0400-18-01-.01 to -.17 ("Rules").

IV.

The Respondents are persons as defined at Tenn. Code Ann. § 68-215-103(11) and responsible parties as defined at Tenn. Code Ann. §§ 68-215-103(17)(A)(i) and (ii). The Respondents have violated the Act as hereinafter stated.

FACTS

V.

On February 8, 2022, the Division received a Notification for Underground Storage Tanks form listing the Respondent Rogers Petroleum, Inc. as the owner of the three UST systems located at 3299 Lascassas Pike, Murfreesboro, Tennessee 37130. The facility ID number is 5-750161.

VI.

On August 3, 2022, the Division received a call from a representative of Respondent Rogers Petroleum, Inc. stating they were informed of an issue with their statistical inventory reconciliation (SIR) release detection results for the premium tank on August 2, 2022. They also stated that on August 2, 2022, they discovered water in their premium tank. Respondent Rogers Petroleum, Inc. sent an email on this day to further document the potential issue with the premium tank. Water ingress in a tank is considered a release and must be investigated.

VII.

On August 9, 2022, the Division performed an inspection at the facility. At the inspection, the following violations were discovered:

- Violation #1: Failure to use spill prevention system that will prevent a release of petroleum to the environment when the transfer hose is detached from the fill port in accordance with Rule 0400-18-01-.02(3)(a)1.(i). Specifically, the results of a hydrostatic test conducted on January 10, 2022, showed the spill bucket for Tank #2A (middle regular) failed and the spill bucket had not been replaced.
- Violation #2: Failure to install, calibrate, operate, or maintain release detection method for tanks in accordance with Rule 0400-18-01-.04(1)(a)2. Specifically, at the time of inspection, the facility was using SIR to conduct release detection on tanks and the results of dispenser calibrations conducted within the previous 12 months were not available for review. Annual meter calibrations are required in order to perform SIR appropriately.
- Violation #3: Failure to inspect overfill prevention at least once every three years in accordance with Rule 0400-18-01-.02(3)(c)2. Specifically, during the overfill operability test, the overfill device associated with Tank #1A (roadside regular) could not be removed for inspection.

VIII.

On August 10, 2022, the Division sent a Results of Compliance Inspection - Fund Reimbursement – Action Required letter to Respondent Rogers Petroleum, Inc. The letter cited the violations discovered at the time of the inspection and required the Respondent Rogers Petroleum, Inc. to submit documentation by August 21, 2022.

IX.

On or about August 19, 2022, the Division received documentation that the meters had been replaced and calibrated. This documentation verified violation #2 discovered at the time of the inspection had been corrected.

X.

On or about August 21, 2022, the Division received:

- Passing integrity testing for the spill bucket associated with Tank #2A after replacement.
- Documentation that the fill port associated with Tank #1A has been capped and fuel drops can no longer occur through that drop tube.

This documentation confirmed violation #1 and #3 had been addressed and the facility had returned to operational compliance.

XI.

On September 6, 2022, the Division received an Application for Fund Eligibility from Respondent Rogers Petroleum, Inc. for the August 2, 2022, suspected release at the facility.

XII.

Division personnel reviewed the Application for Fund Eligibility along with the documentation required by Rule 0400-18-01-.09. Based upon this review, Division personnel determined that this facility did not meet the requirements for the minimum deductible for the release due to the following:

- Failure to install, calibrate, operate, or maintain release detection method for tanks in accordance with Rule 0400-18-01-.04(1)(a)2.
- Failure to use spill prevention system that will prevent a release of petroleum to the environment when the transfer hose is detached from the fill port in accordance with Rule 0400-18-01-.02(3)(a)1.(i).
- Failure to inspect overfill prevention at least once every three years in accordance with Rule 0400-18-01-.02(3)(c)2.

The deductible for the release is \$20,000.00.

VIOLATIONS

XIII.

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondent Rogers Petroleum, Inc. violated Tenn. Code Ann. § 68-215-104(2), which states:

It is unlawful to: Construct, alter or operate a petroleum underground storage tank in violation of this chapter or the rules or regulations established pursuant thereto[.]

XIV.

By failing to install, calibrate, operate, or maintain release detection method for tank in accordance with manufacturer's instructions, Respondent Rogers Petroleum, Inc. has violated rule 0400-18-01-.04(1)(a)2., which states:

0400-18-01-.04 Release Detection.

- (1) General requirements for release detection.
 - (a) Owners and/or operators of UST systems shall provide a method, or combination of methods, of release detection that:
 2. Is installed and calibrated in accordance with the manufacturer's instructions and is operated and maintained in accordance with one of the following[...]

XV.

By failing to install any spill prevention system, Respondent Rogers Petroleum, Inc. has violated Rule 0400-18-01-.02(3)(a)1.(i).

0400-18-.02 UST Systems: Installation and Operation.

- (3) Spill and overfill prevention.
 - (a) Equipment.
 1. Except as provided in part 2 of this subparagraph, to prevent spilling and overfilling associated with petroleum transfer to the UST system, owners and/or operators shall use the following spill and overfill prevention equipment:
 - (i) Spill prevention equipment that will prevent release of petroleum to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin)[...]

XVI.

By failing to perform overfill prevention system inspections every three years, Respondent Rogers Petroleum, Inc. has violated Rule 0400-18-01-.02(3)(c)2., which states:

0400-18-.02 UST Systems: Installation and Operation.

- (3) Spill and overfill prevention.

- (c) Periodic testing of spill prevention equipment and periodic inspection of overfill prevention equipment.
2. Inspections. Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in subpart (a)1.(ii) of this paragraph and will activate when petroleum reaches that level. Inspections must be conducted in accordance with one of the criteria in items 1.(ii)(I) through (IV) of this subparagraph.

ORDER AND ASSESSMENT

XVII.

Pursuant to the authority vested by Tenn. Code Ann. §§ 68-215-107, -114, and -121 of the Act, the Respondents are issued the following Order:

1. The Application for Fund Eligibility for the August 2, 2022, suspected release is approved with a deductible of \$20,000.00
2. The Respondents shall perform release investigation and remediation activities of Rule 0400-18-01-.06 within the timeframes determined by the Division.
3. If the Respondents fail to comply with this order and/or file an appeal within the timeframes stated below, **the above-referenced facility will be placed on the Delivery Prohibition List and the fill ports and dispensers will be red tagged until compliance is achieved.** Tenn. Code Ann. § 68-215-106(c).
4. On or before the thirty-first day after receipt of this Order, the Respondent Rogers Petroleum, Inc. must either complete operator retraining or register for Underground Storage Tank School provided by the Division. If the Respondent chooses to attend Underground Storage Tank School, it must do so within 90 days of receipt of this Order. To complete this item, the Respondent Rogers Petroleum, Inc. shall either:
 - a. Complete online (Tennessee Tank Helper) training anytime at your convenience, using this link:
<https://tdec.tn.gov/tankhelper>
 - If the Respondent does not already have an account, one shall be created and all relevant trainings for the site shall be completed.
 - b. Complete virtual training (Tennessee Tank School) by registering for the upcoming class using this link:

<https://www.tn.gov/environment/program-areas/ust-underground-storage-tanks/operator-training/tank-school.html>

- Tank school classes are held once a month on the second Wednesday of the month. The Respondent shall register to attend the class at least 1 week prior to the class. A post-class test score of 70 or above is required.
7. Failure to comply with any of the requirements of this Order could lead to further enforcement actions, which may include civil penalties, assessment of damages, and/or recovery of costs.
 8. With the exception of the deadline for filing the appeal of this Order, the Director may extend the compliance dates contained within this Order for a fixed time period for good cause shown by the Respondents. To be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay. The Director will reply to the Respondents' request in writing, establishing a new deadline for compliance with this Order. Should the Respondents fail to meet the requirements of this Order by the new deadline, then any associated civil penalty shall be due within 30 days after that deadline. The request for an extension of time does not change the deadline to submit an appeal. See Notice of Rights.

RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondents. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

The Respondents may appeal this Order and Assessment. Tenn. Code Ann. § 68-215-119. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondents received this Order and Assessment or this Order and Assessment will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 68-215-119; Tenn. Code Ann. §§ 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny the Order and Assessment. Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review (appeal) must be directed to the Commissioner of the Tennessee Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243-1548. The petition may be mailed or delivered to this address, or it may be sent to TDEC.Appeals@tn.gov. Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services – Consolidated Fees Section,

Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Paige Ottenfeld at the Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 12th Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, FDA23-0011, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Underground Storage Tanks, Tennessee Department of Environment and Conservation, on this 12th day of January, 2023.



Stanley R. Boyd, Director
Division of Underground Storage Tanks
TN Department of Environment and Conservation

Reviewed by:



[Samantha Buller-Young \(Jan 13, 2023 17:45 EST\)](#)

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