

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
SHILPA PATEL)	
)	CASE NO. UST19-0022
RESPONDENT)	FACILITY: SUNRISE OIL, LLC

ORDER AND ASSESSMENT

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

PARTIES

I.

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

II.

Shilpa Patel (the "Respondent"), is an individual. The Respondent is the registered owner of five (5) underground storage tank ("UST") systems located at 154 Law Road, Jackson, Tennessee 38305 as well as the property owner. Service of process may be made on the Respondent at 635 Westpoint Drive, Lexington, Tennessee 38351.

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, then 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 red tag 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 underground storage tanks have been promulgated pursuant to Tenn. Code Ann. section 68-215-107(f) and are effective as Tenn. Comp. R. & Regs. 0400-18-01-.01 to ,17. ("Rules").

IV.

The Respondent is a person as defined at Tenn. Code Ann. section 68-215-103(11), and has violated the Act as hereinafter stated.

FACTS

V.

On or about January 26, 2018, the Respondent the real property and UST systems located at 154 Law Road, Jackson, Tennessee 38305.

VI.

On or about June 12, 2018, the Division received a Buyer's Notification for Underground Storage Tanks form, signed by the Respondent, listing the Respondent as the owner of the five (5) UST systems located at 154 Law Road, Jackson, Tennessee 38305. The facility ID number is 8-570488.

VII.

On or about June 28, 2018, Division personnel sent a letter to the Respondent and Tej Singh (the former tank owner) confirming the July 23, 2018 compliance inspection date.

VIII.

On or about July 23, 2018, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

Violation #1: Failure to provide release detection method capable of detecting a release from tank that routinely contains product in accordance with Rule 0400-18-01-.04(1)(a)1. Specifically, at the time of the inspection, two (2) inches of liquid was found in Tank 5 (2,000 gallon kerosene).

Violation #2: Failure to ensure that cathodic protection system is tested every three (3) years in accordance with Rule 0400-18-01-.02(4)(c)1(i). Specifically, at the time of the inspection, corrosion protection test results were unavailable for review.

Violation #3: Failure of facility tank owner to have one or more persons designated as Class A and Class B operators in accordance with Rule 0400-18-01-.16(1)(a). Specifically, at the time of the inspection, Class A, B, and C operators had not been properly trained and designated

IX.

On or about September 28, 2018, Division personnel sent a Results of Compliance Inspection - Action Required certified letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by November 8, 2018, to document correction of the violations. U.S. Postal Service tracking records delivery on October 13, 2018.

X.

On or about October 15, 2018, Division personnel sent a Results of Compliance- No Response Received certified letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by November 14, 2018, to document correction of the violations. U.S. Postal Service tracking records delivery on October 17, 2018.

XI.

On or about December 14, 2018, Division personnel sent a Follow-up Letter and Enforcement Action Notice certified letter to the Respondent. The letter cited the violations discovered during the inspection and the Respondent's failure to return to compliance. U.S. Postal Service tracking records delivery on December 19, 2018.

XII.

On or about January 10, 2019 Division personnel sent a Notice of Violation certified letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by February 11, 2019, to document correction of the violations. U.S. Postal Service tracking records delivery on January 14, 2019.

VIOLATIONS

XIII.

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondent has violated Tenn. Code Ann. section 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 provide release detection method capable of detecting a release from tank that routinely contains product the Respondent has violated Rule 0400-18-01-.04(1)(a)1, 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:

1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains petroleum;

XV.

By failing to tightness test UST system after three (3) months but no later than six (6) months after the installation of anodes, the Respondent has violated Rule 0400-18-01-.02(4)(c)3, which states:

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION,

(4) Corrosion protection.

(c) Operation and maintenance of corrosion protection.

3. All UST systems to which sacrificial anodes have been added for the purpose of replacing or enhancing an existing cathodic protection system shall be tightness tested in accordance with subparagraphs (3)(c) and (4)(b) of Rule 0400-18-01-.04. The tightness test shall be conducted no later than six (6) months, but no sooner than (3) months, following addition of the anodes.

XVI.

By the facility's failure to have one or more petroleum UST systems to have one or more persons designated as Class A, Class B, and Class C operators, the Respondent has Rule 0400-18-01-.16(1)(a), which states:

0400-18-01-.16 CERTIFIED OPERATOR PROGRAM.

- (1) Operator Designation Requirements.
 - (a) Effective August 8, 2012 every facility having one or more petroleum UST systems subject to the requirements of Chapter 0400-18-01 must have one or more persons who have been designated by the tank owner as Class A, Class B, and Class C Operators.

XVII.

By failing to cooperate with the Division by failing to provide documents, testing, or monitoring records to the Division, the Respondent has violated Rule 0400-18-01-.03(2), which states:

0400-18-01-.03 Notification, Reporting and Record Keeping.

- (2) Reporting and record keeping.

Owners, operators, and/or other responsible parties of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the division, as well as requests for document submission, testing, and monitoring by the owner, operator, and/or other responsible parties in accordance with the Tennessee Petroleum Underground Storage Tank Act Tenn. Code Ann. §68-215-101 et seq.

ORDER AND ASSESSMENT

XVIII.

Pursuant to the authority vested by Tenn. Code Ann. sections 68-215-107, -114, and -121,

I, Stanley R. Boyd, acting as the authorized representative of the Commissioner, hereby issue the following Order and Assessment to the Respondent:

1. If the Respondent fails to comply with this Order and/or file an appeal within the timeframes stated below, then **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).
2. The Respondent shall perform all actions necessary to correct the outstanding violations to bring the facility into full compliance with regulatory requirements. The Respondent shall provide the

Division with documentation of the corrective action performed; the documentation shall be sufficient to establish a return to full compliance.

i. On or before the 31st day after receipt of this Order, the Respondent shall submit documentation of one of the following options:

Option A: Submit documentation that tank #5 (2,000 gallon kerosene) has been pumped down to less than one (1) inch of liquid.

Options B: Submit documentation that an approved form of release detection has been implemented for the tank.

ii. On or before the 31st day after receipt of this Order, the Respondent shall submit results of a corrosion protection test for the facility,

iii. On or before the 31st day after receipt of this Order, the Respondent shall properly train and designate Class A, B, and C operators for the facility.

3. On or before the 31st day after receipt of this Order, the Respondent shall pay a total civil penalty in the amount of \$15,600.00. This amount consists of the following:

i. One (1) violation assessed at \$3,200.00 per tank for failing to provide release detection method capable of detecting a release from tank that routinely contains product.

ii. Five (5) violations assessed at \$1,200.00 per CP system for a total of \$6,000.00 for failing to ensure that cathodic protection systems are tested within six (6) months of installation and every three (3) years thereafter.

iii. One (1) violation assessed at \$3,800.00 for failing to designate properly trained Class A, Class B, and Class C operators for the referenced facility.

iv. One (1) violation assessed at 20% of the civil penalty for all outstanding violations for failing to provide documents, testing, or monitoring records to the Division for a total of \$2,600.00.

4. The Respondent is advised that the foregoing Order is not in any way to be construed as a waiver, express or implied, of any provision of the law or regulations, including but not limited to, future enforcement for violations of the Act and Regulations which are not charged as violations in this Order. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

5. **Failure to comply with any of the requirements of this Order could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.**

6. For good cause shown by the Respondent, the Director may extend the compliance dates contained within this Order for a fixed time period. To be eligible for this time extension, the

Respondent 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 Respondent's request in writing, establishing a new deadline for compliance with this Order. Should the Respondent 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.

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 Respondent(s). 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 Respondent(s) 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 Respondent(s) 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. § 69-3-110; 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.

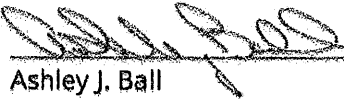
At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny the Order and Assessment. Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated 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. 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, Nashville Environmental Field Office, 711 R.S. Gass Boulevard, Nashville, Tennessee 37216. Attorneys should contact the undersigned counsel of record. **The case number, UST19-0022, should be written on all correspondence regarding this matter.**

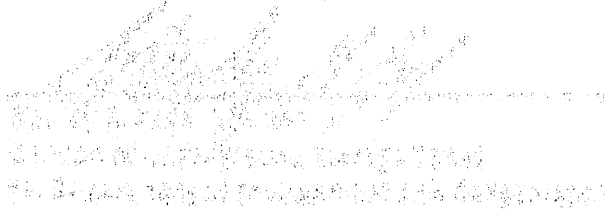
Issued by the Director of the Division of Underground Storage Tanks, Tennessee Department of Environment and Conservation, on this 8th day of April, 2019.


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

Reviewed by:


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