

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
DEPARTMENT OF ENVIRONMENT AND CONSERVATION)	DIVISION OF UNDERGROUND STORAGE TANKS
<i>Petitioner,</i>)	
)	
v.)	CASE NO. UST21-0169
)	
HICKORY STAR RESORT & MARINA, LLC,)	
<i>Respondent.</i>)	

SETTLEMENT AGREEMENT AND ORDER

On January 24, 2022, the Department of Environment and Conservation (“Department”) Division of Underground Storage Tanks (“Division”) issued Order and Assessment number UST21-0169 (“Order”) to Hickory Star Resort & Marina, LLC (“Respondent”). The Respondent filed a timely appeal of the Order on February 14, 2022. Pursuant to Tennessee Code Annotated sections 4-5-105 and 68-215-119(b), the Division and the Respondent have reached a settlement. By executing this settlement, (1) the Division agrees to dismiss the Order and that this settlement resolves and supersedes the Order, and (2) the Respondent agrees that it waives its right to a contested case hearing before the Underground Storage Tanks and Solid Waste Disposal Control Board. The Division alleges the following:

PARTIES

I.

David W Salyers, P.E., is the Commissioner of the Department and is charged with enforcing the Tennessee Petroleum Underground Storage Tank Act (“Act”), Tenn. Code Ann. §§

68-215-101 to -129. Stanley R. Boyd is the duly appointed Division Director and has received written delegation from the Commissioner to administer and enforce aspects of the Act.

II.

The Respondent is a limited liability company created in the State of Tennessee and is the registered owner of one UST system located at 1360 Hickory Star Rd, Maynardville, Tennessee 37807.

JURISDICTION

III.

The Commissioner may issue an order for correction to the responsible party 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. Tenn. Code Ann. § 68-215-114. 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. The Commissioner of the Department delegated such authority to Stanley R. Boyd, Director of the Division.

IV.

The Respondent is a “person” as defined at Tenn. Code Ann. section 68-215-103(11).

FACTS

V.

On July 27, 2021, the Division received a Notification for Underground Storage Tanks form, signed by the Respondent’s owner, John Parton, listing the Respondent as the owner of the one UST system located at 1360 Hickory Star Rd, Maynardville, Tennessee 37807. The facility ID number is 2-870037.

VI.

On May 24, 2021, Division personnel contacted Justin Noah, the Class A and Class B Operator for the facility, by phone and scheduled a compliance inspection to be conducted on June 8, 2021. On or about May 24, 2021, Division personnel also sent a letter confirming the inspection date.

VII.

On June 8, 2021, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

Violation #1: Failure to conduct annual line tightness test or do monthly monitoring on pressurized underground piping in accordance with Rule 0400-18-01-.04(2)(b)1(ii). Specifically, at the time of inspection, no line tightness test was available for review.

Violation #2: Failure to test line leak detectors annually in accordance with guidance provided by the Division and manufacturer's instructions in accordance with Rule 0400-18-01-.04(4)(a). Specifically, at the time of inspection, no annual line leak detector test or sensor function test was available for review.

Violation #3: Failure to ensure that cathodic protection system is tested every three years in accordance with Rule 0400-18-01-.02(4)(c)2(i). Specifically, at the time of inspection, a current cathodic protection system test was not available for review.

Violation #4: Failure to conduct release detection monitoring at least monthly in accordance with Rule 0400-18-01-.04(2)(a). Specifically, at the time of inspection, no release detection results were available for the month of September 2020.

VIII.

On June 28, 2021, Division personnel sent a Results of Compliance Inspection letter to Mr. Noah. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by July 29, 2021, to document correction of the violations.

IX.

On August 4, 2021, Division personnel sent a Results of Compliance Inspection – No Response Received letter to Mr. Noah. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by August 30, 2021, to document correction of the violations.

X.

On September 8, 2021, Division personnel sent a Follow-up Letter and Enforcement Action Notice letter to the Respondent. The letter cited the violations discovered during the inspection and the Respondent's failure to return to compliance.

XI.

On September 14, 2021, the Division received an email from Mr. Noah. The email contained compliance documentation addressing violations discovered at the time of inspection. A passing precision line tightness and line leak detector test conducted on May 27, 2021, by Bill Bass with the service provider company GFT was received. The documentation confirmed that violations #1 and #2, discovered during the inspection, had been addressed.

XII.

On September 29, 2021, Division personnel sent a Notice of Violation letter to the Respondent. The letter cited the violations discovered during the inspection and required the

Respondent to submit documentation to the Division by October 29, 2021, to document correction of the violations.

XIII.

On September 30, 2021, the Division received an email from Mr. Noah. The email contained compliance documentation addressing violations discovered at the time of inspection. An impressed current cathodic protection test conducted on September 23, 2021, by Charles Garvin with Cathodic Protection Services, Inc. The test showed that the tank received failing results and that the tank was not adequately being protected from corrosion. Due to the failed corrosion protection test, violation #3 was amended to state the following:

Violation #3: Failure to operate and maintain corrosion protection (CP) system to provide continuous protection in accordance with Rule 0400-18-01-.02(4)(c)1. Specifically, the September 23, 2021, CP test indicates that tank 1A received failing results.

XIV.

On October 4, 2021, Division personnel sent an email to Mr. Noah, explaining what was required to address the failed corrosion protection system violation. Division personnel also requested that Mr. Noah submit documentation to the Division documenting the correction of violation #4.

VIOLATIONS

XV.

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[.]

XVI.

By failing to conduct an annual line tightness test or do monthly monitoring on pressurized underground piping, the Respondent has violated Rule 0400-18-01-.04(2)(b)1(ii), which states:

0400-18-01-.04 Release Detection.

(2) Requirements for petroleum UST systems.

Owners and/or operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(b) Piping.

Underground piping that routinely contains petroleum shall be monitored for releases in a manner that meets one of the following requirements:

1. Pressurized piping.

Underground piping that conveys petroleum under pressure shall:

...

(ii) Have an annual line tightness test conducted in accordance with subparagraph (4)(b) of this rule or have monthly monitoring conducted in accordance with subparagraph (4)(c) of this rule.

XVII.

By failing to test line leak detectors annually, the Respondent has violated Rule 0400-18-01-.04(4)(a), which states:

0400-18-01-.04 Release Detection.

(4) Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of paragraph (2) of this rule shall be conducted in accordance with the following:

(a) Automatic line leak detectors.

Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of petroleum through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with guidance provided by the Division.

XVIII.

By failing to operate and maintain corrosion protection system to provide continuous protection, the Respondent has violated Rule 0400-18-01-.02(4)(c)1, which states:

0400-18-01-.02 UST Systems: Installation and Operation.

(4) Corrosion protection.

....

(c) Operation and maintenance of corrosion protection.

All owners and/or operators of metal UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service in accordance with paragraph (4) of Rule 0400-18-01-.07:

1. All corrosion protection systems shall be operated and maintained in accordance with a corrosion expert's design to continuously provide corrosion protection to the metal components of that portion of the tank, piping and underground ancillary equipment that routinely contains petroleum and is in contact with the ground.

XIX.

By failing to conduct release detection monitoring at least monthly for releases, the Respondent has violated Rule 0400-18-01-.04(2)(a), which states:

0400-18-01-.04 Release Detection.

(2) Requirements for petroleum UST systems.

Owners and/or operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(a) Tanks.

Tanks shall be monitored at least monthly for releases using one of the methods listed in subparagraphs (3)(c) through (f) of this rule, except that tanks which meet the volume, diameter, and test duration requirements as set forth in subpart (3)(a)1.(i) of this rule may use manual tank gauging (conducted in accordance with subparagraph (3)(a) of this rule).

XX.

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 T.C.A. §§ 68-215-101 et seq.

SETTLEMENT AGREEMENT AND ORDER

XXI.

Pursuant to the authority vested by sections 68-215-107, -114, and -121 of the Act, I, Stanley R. Boyd, acting as the authorized representative of the Commissioner, hereby execute the following Settlement Agreement and Order.

1. The Respondent will pay \$1,200.00 of the \$7,440.00 in total civil penalties assessed in the Order on or before the thirty-first day after execution of this order to the following address:

Treasurer, State of Tennessee
Division of Fiscal Services - Consolidated Fees Section
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 10th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

2. The Respondent will pay an additional \$1,248.00 in contingent civil penalties, not to exceed the remaining \$6,240.00 in total civil penalties, each time the Respondent fails to comply with the following:
 - i. On or before the thirty-first day after execution of this order, the Respondent shall complete and submit the enclosed Request to Attend Underground Storage Tank Training form to the Division for scheduling attendance.
 - ii. The Respondent must attend Underground Storage Tank Training within 90 days after execution of this order.
 - iii. Within 180 days of the execution of this order, the Respondent must have the facility's impressed current corrosion protection system repaired and recertified by a NACE-certified corrosion expert. The Respondent must then send the recertification documentation to the Division.

- iv. No sooner than 90 days and no than later than 180 days after the impressed current corrosion protection system has been recertified, the Respondent shall conduct a precision tank tightness test on tank #1A and submit documentation to the Division.
- v. The Respondent shall remain in compliance with the Act, as evidenced by incurring no automatic enforcement referral violations, for a period of one year following the execution of this settlement agreement.

WAIVER OF RIGHT TO APPEAL

The Respondent understands that it has the right to appeal this Order pursuant to sections 69-3-109, 69-3-115, and 69-3-116 of the Act. By signing below, the Respondent knowingly and voluntarily waives any right it may have to appeal this Order.

DEPARTMENT'S RESERVATION OF RIGHTS

In entering this Settlement Agreement and Order, 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. 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).

RESPONDENT'S RESERVATION OF RIGHTS

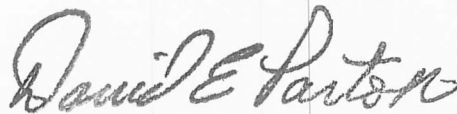
The Respondent does not admit or deny the factual allegations, or the alleged violations of law contained in this Settlement Agreement and Order. The Respondent reserves their rights to contest the factual allegations and alleged violations contained in this Settlement Agreement and

Order in any proceeding other than a proceeding brought by the Department to enforce the terms of this Settlement Agreement and Order.

The Parties agree that this Settlement Agreement and Order is a fair and reasonable resolution of this case. This settlement agreement and order shall be effective upon being signed on behalf of both parties. Executed by the Director of the Division on this 18th day of April, 2022.



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



David E. Parton
Respondent

Reviewed by:



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