

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

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF UNDERGROUND</b>
	)	<b>STORAGE TANKS</b>
<b>AGEE PROPERTIES, LIMITED</b>	)	
<b>PARTNERSHIP</b>	)	<b>CASE NO. UST18-0005</b>
	)	
<b>RESPONDENT</b>	)	<b>FACILITY: UNCLE SANDY'S</b>
		<b>AUTO/TRUCK PLAZA</b>

**SETTLEMENT AGREEMENT AND ORDER**

On November 9, 2018, an Order and Assessment was issued to Agee Properties, Limited Partnership (hereinafter “the Respondent”). On November 15, 2018, the Respondent was served via its registered agent, Robert W. Agee. The Order and Assessment was timely appealed. Pursuant to Tennessee Code Annotated (Tenn. Code Ann.) §§ 4-5-105 and 68-215-119(b), the Commissioner and Agee Properties, Limited Partnership (collectively “the Parties”), have reached a settlement. By signing and entering into this Settlement Agreement and Order, (1) the Commissioner does hereby dismiss the Respondent from the November 9, 2018 Order, and (2) the Respondent now agrees to this Settlement Agreement and Order and hereby waive the Respondent’s right to a contested case hearing before the Board. This Settlement Agreement and Order resolves and supersedes the November 9, 2018 Order as to the Respondent. The Parties now stipulate and agree to the following:

**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.

Agee Properties, Limited Partnership (the "Respondent"), is a limited partnership created in the State of Tennessee, and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of three (3) underground storage tank ("UST") systems located at Uncle Sandy's Auto/Truck Plaza, 2019 South Church Street, Murfreesboro, Tennessee 37130. Service of process may be made on the Respondent's Registered Agent, Robert W. Agee, at 200 South Young Street, Sparta, Tennessee 38583.

## 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 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 USTs 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. § 68-215-103(11) and has violated the Act as hereinafter stated.

## FACTS

### V.

On or about December 20, 1995, the Division received a Notification for Underground Storage Tanks form, signed by Robert W. Agee, listing the Respondent as the owner of the three (3) UST

systems, located at Uncle Sandy's Auto/Truck Plaza, 2019 South Church Street, Murfreesboro, Tennessee 37130. The facility ID number is 5-750286.

## VI.

On or about March 30, 2017, Division personnel contacted Robert Agee by phone and scheduled a compliance inspection to be conducted on April 12, 2017. On or about April 1, 2017, Division personnel sent a letter confirming the inspection date.

## VII.

On or about May 10, 2017, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

- Violation #1: Failure to report a suspected release within seventy-two (72) hours to the Division in accordance with Rule 0400-18-01-.05(1). Specifically, at the time of the inspection, evidence of fuel underneath the dispenser and in the submersible turbine pump ("STP") sump associated with Tank #7A (30,000 gallon diesel) was discovered. Additionally, the automatic tank gauge ("ATG") showed active high water alarms on Tank #6A (14,000 gallon gasoline) and Tank #7A (30,000 gallon diesel).
- Violation #2: Failure to maintain records of each repair to an UST system accordance with Rule 0400-18-01-.02(7)(f). Specifically, at the time of the inspection, diesel dispenser meters 9, 11, 12, 13, and 14 were leaking.
- Violation #3: Failure to test line leak detectors annually in accordance with Rule 0400-18-01-.04(4)(a). Specifically, at the time of the inspection, the diesel STP line leak detector was not tested on the March 29, 2017 test
- Violation #4: Failure to use any overfill prevention system in accordance with Rule 0400-18-01-.02(3)(a)1(ii). Specifically, at the time of the inspection, no verification of overfill prevention could be provided.

**Violation #5:** Failure to use any spill prevention in accordance with Rule 0400-18-01-.02(3)(a)1(i). Specifically, at the time of the inspection, the spill bucket for Tank #6B (6,000 gallon premium) appeared damaged.

### **VIII.**

On or about June 5, 2017, 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 July 5, 2017, to document correction of the violations. U.S. Postal Service tracking records delivery on June 8, 2017.

### **IX.**

On or about July 10, 2017, Division personnel sent a Results of Compliance Inspection-No Response Received certified letter to the Respondent. The letter cited the violations discovered at the time of the inspection and required the Respondent to submit documentation to the Division by August 7, 2017, to document correction of the violations. U.S. Postal Service tracking records delivery on July 14, 2017.

### **X.**

On or about August 16, 2017, 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 August 21, 2017.

### **XI.**

On or about August 24, 2017, Division personnel conducted a site visit to the facility to check the status of open violations discovered at the time of the May 10, 2017 inspection. Division personnel discovered product in the STP sump associated with Tank #7A (30,000 gallon diesel).

### **XII.**

On or about December 18, 2017, Division personnel sent a Notice of Violation certified letter to the Respondent. The letter cited the violations discovered during the May 1, 2017 inspection and required the Respondent to submit documentation to the Division by January 18, 2018, to demonstrate compliance. U.S. Postal Service records delivery on December 22, 2017. To date, the Respondent has not submitted any of the necessary compliance documentation.

**XIII.**

When the Respondent failed to meet the January 18, 2018 deadline, the following violation was added:

Violation #5: Failure to cooperate with the Division by failing to provide documents, testing or monitoring records to the Division in accordance with Rule 0400-18-01-.03(2).

**XIV.**

To date the Respondent has not cooperated with the Division and is still in non-compliance.

**XV.**

Upon additional Divisional review, it was determined that the damaged spill bucket rule cited in the first Results of Compliance Inspection-Action Required certified letter was still applicable and violations needed to be assessed in order for the facility to return to compliance.

**VIOLATIONS**

**XVI.**

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondent has 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;

**XVII.**

By failing to report a suspected release within seventy-two (72) hours to the Division, the Respondent has violated Rule 0400-18-01-.05(1)(a), which states:

**0400-18-01-.06 RELEASE REPORTING, INVESTIGATION AND CONFIRMATION**

**(1) Reporting of Suspected Releases.**

- (a) Owners and/or operators of UST systems shall report to the division within seventy-two (72) hours and follow the procedures in paragraph (3) of Rule 0400-18-01-.05 for any of the following conditions:**

## **XVIII.**

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 (3) gallons per hour at ten (10) pounds per square inch line pressure within one (1) hour. An annual test of the operation of the leak detector shall be conducted in accordance with guidance provided by the division.

## **XIX.**

By failing to use any overfill prevention system, the Respondent has violated Rule 0400-18-01-.02(3)(a)1(ii), which states:

### **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:

**(ii)      Overfill prevention equipment that will:**

- (I)      Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full;**
- (II)      Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the**

flow into the tank or triggering a high-level alarm;  
or

- (III) Restrict flow thirty (30) minutes prior to overfilling, alert the operator with a high level alarm one (1) minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on top of the tank are exposed to product due to overfilling.

## **XX.**

By failing to use any spill prevention system, the Respondent has violated Rule 0400-18-01-.02(3)(a)1(i), which states:

0400-18-01-.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); and

## **XXI.**

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.

**SETTLEMENT TERMS AND ORDER**

**XXII.**

**WHEREFORE, PREMISES CONSIDERED**, the Director of the Division of Underground Storage Tanks orders, and Agee Properties, Limited Partnership now agree that:

1. A representative of the Respondent Agee Properties, Limited Partnership, shall attend the Division's "Tank School" within 120 days of effective date of this agreement.
2. The Respondent shall be responsible for the payment of civil penalties in the amount of \$10,080.<sup>1</sup> Said civil penalties shall be paid as follows:
  - a. Within six months of the effective date of this Settlement Agreement, the Respondent shall pay a total of \$2,016 of the assessed CIVIL PENALTY in minimum monthly installment payments of \$416, the first payment being paid due on the 5<sup>th</sup> business day following the effective date of this agreement. The remaining four payments shall be received by the Department not later than the fifth (5<sup>th</sup>) day of each successive month starting in May 5, 2021. Should the first day of any successive month, or other payment due date, be on Saturday, Sunday or a legal State holiday, the payment shall be due on the next business day following such day.
  - b. The Respondent shall pay the remaining civil penalty in the amount of \$8,064, if and only if, the following occurs:
    - i. Said Respondent fails to timely comply with paragraphs 1 and 2a, above; and/or
    - ii. TDEC discovers an Automatic Enforcement Referral Violation at the Subject Property within a one (1) year period commencing on the effective date of this settlement. See a list of Automatic Enforcement Referral Violations set forth herein.
3. This Settlement Agreement is an integrated contract and all prior negotiations are merged into this document. No promise, offer, inducement, or representation not set out in this Settlement Agreement and Order forms any part of the Parties' agreement. This Settlement Agreement and Order is the product of the Parties' joint efforts, and for purposes of applying any rule of construction, the Parties shall be deemed to have participated equally in the drafting of this

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<sup>1</sup>Based on documentation or other evidence submitted after the issuance of the November 9, 2018 Order, the Division agreed to reduce the civil penalties from the original amount of \$19,680.



Settlement Agreement and Order.

4. The Parties each have had the opportunity to, and have consulted with, their respective counsel, if any, regarding this Settlement Agreement and Order, and each enters into this Agreement voluntarily and with full knowledge of its legal consequences.
5. This Settlement Agreement and Order shall be governed by and interpreted according to the laws of the State of Tennessee.
6. Each of the undersigned representatives is fully authorized by the Party he or she represents to enter into the terms and conditions of this Settlement Agreement and Order and is authorized to legally bind such Party to this Agreement.
7. This Settlement Agreement and Order is contingent upon the approval of the requisite state official(s) as provided by Tenn. Code Ann. § 20-13-103. The effective date of this Settlement Agreement shall be the date it is approved and signed by both parties.
8. Each signatory may execute this Agreement in multiple counterparts, with separate pages for each party, each of which is deemed an original, but all of which, taken together, are deemed to constitute one and the same instrument. A facsimile, telecopy, or other copy of the signature shall have the same force and effect as an original signature.
9. TIME IS OF THE ESSENCE. All payments contemplated herein must be made to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10<sup>th</sup> Floor, Nashville, Tennessee 37243. The case number, "UST18-0005" must be clearly shown on the check or money order to ensure that the payment is properly credited.

**RESERVATION OF RIGHTS**

In issuing 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 Settlement Agreement and Order will be considered as a mitigating factor in determining the need for future enforcement action(s).

By agreeing and entering into this Settlement Agreement and Order, the Parties wish to settle and resolve this matter as expeditiously and efficiently as possible. The Parties agree to comply with this Settlement Agreement and Order in order to avoid the cost of protracted litigation and to voluntarily promote greater environmental protection. The Respondent reserves the right to contest the factual allegations contained in the Settlement Agreement and Order in any proceeding other than a proceeding brought to enforce the terms of this Settlement Agreement and Order.

**NOTICE AND WAIVER OF RIGHT OF APPEAL**

By entering into this Settlement Agreement and Order, Respondent Agee Properties, Limited Partnership waives all rights under Tenn. Code Ann. § 68-215-119(b) to seek review of this Settlement Agreement and Order.

**THIS SETTLEMENT AGREEMENT AND ORDER SHALL BE EFFECTIVE UPON BEING SIGNED ON BEHALF OF ALL PARTIES.**

**AGEE PROPERTIES, LIMITE PARTNERSHIP**

Robert W. Agee  
SIGNATURE

3-15-21  
DATE

By: Robert W. Agee  
Print Name

Title: General Partner

**THIS SETTLEMENT AGREEMENT AND ORDER SHALL BE EFFECTIVE UPON BEING SIGNED ON BEHALF OF ALL PARTIES.**

**TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION:**

*Stanley R. Boyd*

**SIGNATURE**

March 16, 2021

**DATE**

**By:** Stanley R. Boyd

**Print Name**

**Title:** Director TDEC-UST

Violation	State Cite	Rule Section
Failure of tanks installed after July 27, 2007 to be secondarily contained.	0400-18-01-.02(2)(a)1	UST Systems: Installation & Operation (Secondary Containment)
Failure to provide interstitial monitoring on tanks installed after July 24, 2007.	0400-18-01-.02(2)(a)5	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed after July 27, 2007 to be secondarily contained.	0400-18-01-.02(2)(b)1	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed after July 25, 2007 to be monitored for a release at least every thirty (30) days	0400-18-01-.02(2)(b)5	UST Systems: Installation & Operation (Secondary Containment)
Failure to install any spill prevention system.	0400-18-01-.02(3)(a)1(i)	UST Systems: Installation & Operation
Failure to install any overfill prevention system.	0400-18-01-.02(3)(a)1(ii)	UST Systems: Installation & Operation
Failure to provide any cathodic protection for metal tanks.	0400-18-01-.02(4)(a)	UST Systems: Installation & Operation
Failure to permanently close a lined tank where CP was not added by the December 22, 2012 deadline.	0400-18-01-.02(4)(a)3(v)	UST Systems: Installation & Operation
Failure to provide any cathodic protection for metal piping.	0400-18-01-.02(4)(b)	UST Systems: Installation & Operation
Failure to provide release detection method capable of detecting a release from tank or piping that routinely contains product.	0400-18-01-.04(1)(a)1	Release Detection (General)
Failure to install, calibrate, operate, or maintain release detection method in accordance with manufacturer's instructions.	0400-18-01-.04(1)(a)2	Release Detection (General)
Failure to provide a release detection method that meets the performance requirements for tanks or piping.	0400-18-01-.04(1)(a)3	Release Detection (General)
Failure to monitor tanks at least every 30 days, if appropriate.	0400-18-01-.04(2)(a)	Release Detection (General)
Failure to provide any release detection for underground piping.	0400-18-01-.04(2)(b)	Release Detection (Piping)
Failure to install line leak detector for pressurized underground piping.	0400-18-01-.04(2)(b)1(i)	Release Detection (Pressurized Piping)
Failure to conduct annual line tightness test or do monthly monitoring on pressurized underground piping.	0400-18-01-.04(2)(b)1(ii)	Release Detection (Pressurized Piping)
Failure to comply with general remedial requirements	0400-18-01-.06	Petroleum Release Response, Remediation, and Risk Management
Division not notified of tank closure.	0400-18-01-.07(4)(a)1-2	Out-of-Service UST Systems and Closure
Failure to conduct system closure sampling.	0400-18-01-.07(5)(a)-(b)	Out-of-Service UST Systems and Closure
Failure to register an underground storage tank in accordance with the statute.	Tenn. Code Ann. § 68-215-106(a)	Tennessee Code Annotated
Placing petroleum into an underground storage tank system(s) where the Division has attached a tag or notice to the dispensers or fill ports or that has been placed on the Delivery Prohibition list on the website.	Tenn. Code Ann. §§ 68-215-106(c) and (e) 0400-18-01-.10(6)(a)	Fee Collection
Illegal Red Tag Removal	Tenn. Code Ann. § 68-215-106(c)-(d)	Tennessee Code Annotated