

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
SAEED S. MOHARRERI, TATYANA)	
ZADDRA-MOHARRERI, & BELLA M.)	
MOHARRERI)	
)	CASE NO. UST18-0024
RESPONDENTS)	FACILITY: SWIFTY NO. 286

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.

Saeed S. Moharreri (the "Respondent Saeed"), is an individual. Respondent Saeed is the registered owner of four (4) underground storage tank ("UST") systems located at Swifty No. 286, 627 South Broadway, Portland, Tennessee 37148. Service of process may be made on Respondent Saeed at 1001 Franklin Road, Brentwood, Tennessee 37027.

Tatyana Zaddra-Moharreri (the "Respondent Tatyana"), is an individual. Respondent Tatyana is the registered owner of four (4) underground storage tank ("UST") systems located at Swifty No. 286, 627

South Broadway, Portland, Tennessee 37148. Service of process may be made on Respondent Tatyana at 1001 Franklin Road, Brentwood, Tennessee 37027.

Bella M. Moharreri (the "Respondent Bella"), is an individual. Respondent Bella is the registered owner of four (4) underground storage tank ("UST") systems located at Swifty No. 286, 627 South Broadway, Portland, Tennessee 37148. Service of process may be made on Respondent Bella at 1001 Franklin Road, Brentwood, Tennessee 37027.

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. § 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 have violated the Act as hereinafter stated.

FACTS

V.

On or about October 23, 2015, the Division received a Notification for Underground Storage Tanks form listing the Respondents as the owners of the four (4) UST systems located at Swifty No. 286, 627 South Broadway, Portland, Tennessee 37148. The facility ID number is 5-830325.

VI.

On or about April 7, 2017, Division personnel contacted Respondent Saeed by phone. After numerous phone calls and emails, Division personnel scheduled a compliance inspection to be conducted

on June 12, 2017. On or about June 7, 2017, Division personnel also sent a letter confirming the inspection date.

VII.

On or about May 30, 2017, Division personnel received an email from Marty Quinn, P.E. of Big Sky Consulting Group, LLC, indicating that the Respondents wished to permanently close the tanks at the facility.

XI.

On or about June 12, 2017, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

Violation #1: Failure to ensure that cathodic protection (CP) system is tested within six (6) months of installation and every three (3) years thereafter in accordance with Rule 0400-18-01-.02(4)(c)2(i). Specifically, at the time of the inspection, no corrosion protection test was provided and the last available test was dated July 19, 2013.

Violation #2: 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, the owner has not designated trained Class A and Class B operators.

X.

On or about June 14, 2017, Division personnel sent a Results of Compliance Inspection - Action Required certified letter to Respondent Saeed. The letter cited the violations discovered during the inspection and required submittal of documentation to the Division by July 17, 2017, to demonstrate compliance. U.S. Postal Service tracking records delivery on June 29, 2017.

XI.

On or about June 29, 2017, Division personnel sent an email to Respondent Saeed with the Action Required letter and the permanent closure form attached.

XII.

On or about July 24, 2017, Division personnel sent a Results of Compliance Inspection-No Response Received certified letter to Respondent Saeed. The letter cited the violations discovered during the inspection and required submittal of documentation to the Division by August 25, 2017, to demonstrate compliance. U.S. Postal Service tracking records indicate this mail was returned to sender.

XIV.

On or about September 12, 2017, Division personnel sent a Follow-up Letter and Enforcement Action Notice certified letter to Respondent Saeed. The letter cited the violations discovered during the inspection and the failure to return to compliance. U.S. Postal Service tracking records delivery on September 16, 2017.

XV.

On or about September 22, 2017 Division personnel sent a Notice of Violation certified letter to Respondent Saeed. The letter cited the violations discovered during the inspection and the failure to return to compliance. U.S. Postal Service has not yet recorded delivery.

XVI.

Because delivery of the September 22, 2017 letter could not be confirmed, on or about October 23, 2017, Division personnel re-sent a Notice of Violation certified letter to Respondent Saeed. The letter cited the violations discovered at the time of the inspection and the failure to return to compliance. U.S. Postal Service records delivery on October 25, 2017.

XVIII.

On or about November 29, 2017, Division personnel sent an Extension Request-Approved letter to Respondent Saeed. This letter verified that a thirty day extension had been approved and set a new compliance deadline for December 29, 2017.

XXII.

On or about February 2, 2018, Division personnel sent an Extension Request-Approved letter which was requested on January 31, 2018 to Respondent Saeed. This letter verified that a thirty day extension had been approved and set a new compliance deadline for March 2, 2018.

XXIII.

On or about March 12, 2018, Division personnel performed a red tag inspection. The red tags were still in-tact and attached to the fill ports.

XXIV.

To date, no compliance documentation has been received by the Division.

VIOLATIONS

XXV.

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

XXVI.

By failing to tightness test UST system after three (3) months but no later than six (6) months after the installation of anodes , the Respondents have 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.

XXVII.

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 Respondents have violated 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.

XXVIII.

By failing to cooperate with the Division by failing to provide documents, testing, or monitoring records to the Division, the Respondents have 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

XXIX.

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 68-215-107, 68-215-114, and 68-215-121,

I, Stanley R. Boyd, acting as the authorized representative of the Commissioner, hereby issue the following ORDER AND ASSESSMENT to the Respondents:

1. If the Respondents fail to comply with this Order and/or file an appeal within the timeframes stated below, then pursuant to Tenn. Code Ann. § 68-215-106(c), THE ABOVE REFERENCED FACILITY WILL REMAIN ON THE "DO NOT DELIVER" LIST AND THE FILL PORTS AND DISPENSERS WILL REMAIN RED TAGGED until compliance is achieved.
2. Respondents shall perform all actions necessary to correct the outstanding violation to bring the facility into full compliance with regulatory requirements. Respondents 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 thirty-first (31st) day after receipt of this Order, the Respondents shall submit results of a corrosion protection test to the Division for review.
 - ii. On or before the thirty-first (31st) day after the receipt of this Order, the Respondents shall designate a Class A and B operator for the facility through the Tennessee Tank Helper website at <http://apps.tn.gov/ustop/>.
 - iii. On or before the thirty-first (31st) day after the receipt of this Order, the Respondents shall submit this documentation to the Division in a timely manner.

3. On or before the thirty-first (31st) day after the receipt of this Order, the Respondents shall submit payment of all outstanding annual tank fees and late penalties. The Respondents shall contact the Fees and Notification section at 615-532-0945 for the amount due.
4. On or before the thirty-first (31st) day after receipt of this Order, the Respondents shall pay a TOTAL CIVIL PENALTY in the amount of TEN THOUSAND THREE HUNDRED AND TWENTY DOLLARS (\$10,320.00). This amount consists of the following:
 - i. Four (4) violations assessed at ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00) per Corrosion Protection (CP) system for a total of FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$4,800.00).
 - ii. One (1) violation assessed at THREE THOUSAND EIGHT HUNDRED DOLLARS (\$3,800.00) for failing to designate properly trained Class A and Class B operators for the referenced facility for a total of THREE THOUSAND EIGHT HUNDRED DOLLARS (\$3,800.00).
 - iii. One (1) violation assessed at twenty percent (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 SEVEN HUNDRED AND SIXTY DOLLARS (\$1,720.00).
5. Respondents are 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 Respondents in the future.
6. **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.**
7. For good cause shown by the Respondents, the Director may extend the compliance dates contained within this Order for a fixed time period. 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 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 THIRTY (30) DAYS after that deadline.

NOTICE OF RIGHTS

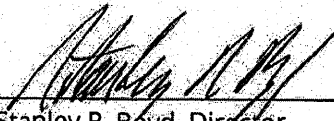
Tenn. Code Ann. § 68-215-119 allows a Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Commissioner within THIRTY (30) DAYS after the date the Respondent received this Order and Assessment or this Order and Assessment will become final (not subject to review).

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 pursuant to the provisions of Tenn. Code Ann. § 68-211-119(b), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Rule 1360-04-01 *et seq.* (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. This includes the authority to modify (decrease or increase) the penalty within the statutory limits of Tenn. Code Ann. § 68-215-121 (from \$1 to \$10,000 per day per violation). 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.

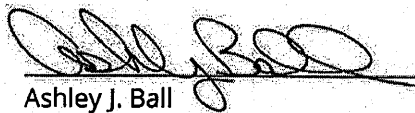
Any petition for review (appeal) must be directed to the Commissioner of the Tennessee Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue 2nd FL, Nashville, TN 37243-1548. 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 FL, Nashville, TN 37243. Technical questions and other correspondence involving compliance issues should be sent to Paige Ottenfeld, 711 R.S. Gass Boulevard, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, UST18-0024, 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 30th day of July, 2019.



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

Reviewed by:



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