

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

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF UNDERGROUND</b>
	)	<b>STORAGE TANKS</b>
<b>H. DOUGLAS THOMAS</b>	)	
	)	<b>CASE NO. UST20-0014</b>
<b>RESPONDENT</b>	)	<b>FACILITY: THOMAS CORNER GROCERY</b>

**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.**

H. Douglas Thomas ("Respondent") is an individual. The Respondent is the registered owner of three underground storage tank ("UST") systems located at 3210 Montezuma Road, Henderson, Tennessee, 38340. Service of process may be made on the Respondent at 625 Inca Road, Henderson, Tennessee, 38340.

**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 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 February 16, 2016, the Division received a Buyer's Notification for Underground Storage Tanks form, signed by the Respondent, listing the Respondents as the owner of the three UST systems located at 3210 Montezuma Road, Henderson, Tennessee, 38340. The facility ID number is 8-120079.

**VI.**

On or about May 22, 2019, Division personnel contacted the Respondent by phone and scheduled a compliance inspection to be conducted on June 5, 2019. On or about May 23, 2019, Division personnel also sent a letter confirming the inspection date.

**VII.**

On or about June 5, 2019, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

- Violation #1: Failure to continue operation and maintenance of release detection in a temporarily closed tank system that contains product in accordance with Rule 0400-18-01-.07(1)(a). Specifically, at the time of the inspection, Tank 6A (middle tank) contained 2.5 inches of water.
- Violation #2: Failure to monitor tanks at least monthly in accordance with Rule 0400-18-01-.04(2)(a). Specifically, at the time of the inspection, monthly release detection for 12 months for Tank 5A was not available for Division review.
- Violation #3: Failure to report a change of status for a UST system within 30 days in accordance with Rule 0400-18-01-.03(1)(g). Specifically, at the time of the inspection, all tank systems were registered as Temporarily Out of Service, however, Tank 5A (easternmost tank) was in use.

- Violation #4: Failure to measure water level in the bottom of the tank to the nearest 1/8<sup>th</sup> inch monthly in accordance with Rule 0400-18-01-.04(3)(a)8. Specifically, at the time of the inspection, the previous 12 months of monthly water readings were not available for Division review.
- Violation #5: Failure to install, calibrate, operate, or maintain a release detection method for tank in accordance with Rule 0400-18-01-.04(1)(a)2. Specifically, at the time of the inspection, inventory records for the previous 12 months were not available for Division review.
- Violation #6: Failure to have equipment capable of taking measurements to the nearest 1/8<sup>th</sup> inch in accordance with Rule 0400-18-01-.04(3)(a)2. Specifically, at the time of the inspection, the gauging stick used for gathering release detection measurements was severely worn and not capable of taking measurements to the nearest 1/8<sup>th</sup> inch.
- Violation #7: Failure to provide a release detection method capable of detecting a release from a tank that routinely contains product in accordance with Rule 0400-18-01-.04(1)(a)1. Specifically, at the time of the inspection, tank conversion charts for the release detection method were not utilized.
- Violation #8: Failure to have Statistical Inventory Reconciliation (SIR) reports generated before the end of the month after the end of the data collection for that time period.

#### **VIII.**

On or about July 24, 2019, Division personnel sent a Results of Compliance Inspection 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 31, 2019, to document correction of the violations. U.S. Postal Service tracking records delivery on June 26, 2019.

#### **IX.**

On or about August 7, 2019, Division personnel sent a Results of Compliance Inspection – No Response Received certified letter to the Respondent. The letter cited the violations discovered during the inspection that had not been addressed and required the Respondent to submit documentation to the Division by September 12, 2019, to document correction of the violations. U.S. Postal Service tracking records delivery on August 9, 2019.

**X.**

On or about September 16, 2019, Division personnel contacted the Respondent via telephone regarding the status of correcting the violations. The Respondent stated all had been corrected but the SIR report. The Respondent had the data but needed to submit it to SIR vendor. The Respondent requested an extension.

**XI.**

On or about September 23, 2019, Division personnel sent an Extension Request – Approved letter to the Respondent and required the Respondent to submit documentation to the Division by October 17, 2019, to document correction of the violations.

**XII.**

On or about October 3, 2019, Division personnel met on site with the Respondent to review the violations found at the time of the inspection and the requirements to correct the violations. A notification form was completed to correct tank status registration (violation #3). Tank 6A still contained 2.5 inches of water.

**XIII.**

On or about October 28, 2019, 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 the letter was marked as Unclaimed/Being Returned to Sender on November 14, 2019.

**XIV.**

On or about December 16, 2019, Division personnel sent a Notice of Violation certified letter to the Respondent. The letter cited the violations discovered during the inspection that have not received a response and required the Respondent to submit documentation to the Division by January 16, 2020, to document correction of the violations. U.S. Postal Service tracking records the letter was marked as Unclaimed/Being Returned to Sender on January 6, 2020.

**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 provide a release detection method capable of detecting a release from a 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;

**XVII.**

By failing to cooperate by failing to provide documents, testing, or monitoring records to the Division upon initial request, 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.

**XVIII.**

By failing to pay fees, penalties, and interest on a tank, the Respondent has violated Rule 0400-18-01-.03(b), which states

**0400-18-01-.10 FEE COLLECTION.**

- (3) Annual petroleum underground storage tank fees.
  - (b) Any person who is an owner and/or operator of a petroleum underground storage tank subject to annual fees shall pay the required annual fee unless the fee is paid by another person on behalf of the tank owner and/or operator.

## ORDER AND ASSESSMENT

### XIX.

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, **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 and 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 31<sup>st</sup> day after receipt of this Order, the Respondent shall submit a disposal manifest for the of the removal of all residue in Tank 6A to properly register the tank as Temporarily Out of Service (TOS) or shall begin release detection on Tank 6A and submit the first month of release detection records.
  - ii. On or before the 31<sup>st</sup> day after receipt of this Order, the Respondent shall submit Statistical Inventory Reconciliation (SIR) records for Tank 5A for the previous 12 months. Documentation of monthly water readings, monthly inventory records, and a new gauging stick used for measurements, as required for SIR, shall be submitted to the Division.
  - iii. On or before the 31<sup>st</sup> day after receipt of this Order, the Respondent shall submit payment of all tank fees and late penalties for this facility. To address this violation, please contact the Fees and Notification section at (615)532-0945 to receive the outstanding balance as the balance will continue to accrue five percent (5%) interest on the first of every month.
3. On or before the 31<sup>st</sup> day after receipt of this Order, the Respondent shall pay a total civil penalty in the amount of \$7,680.00. This amount consists of the following:
  - i. Two violations assessed at \$3,200.00 per tank system for a total of \$6,400.00 for failing to provide a release detection method.
  - ii. One violation assessed at \$1,280.00 for failing to cooperate with the Division.
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. 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 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 received this Order and Assessment or this Order and Assessment will become final.

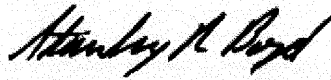
If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 69-3-110; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of 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 should be directed to the Commissioner of the 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. The petition may be mailed or delivered to this address, or it may be sent to [TDEC.Appeals@tn.gov](mailto: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 Tonya Spence Casson, Division of Underground Storage Tanks, Chattanooga Environmental Field Office, 1301 Riverfront Parkway, Chattanooga, Tennessee, 37402 or email at [Tonya.Spence.Casson@tn.gov](mailto:Tonya.Spence.Casson@tn.gov). Attorneys should contact the undersigned counsel of record. **The case number, UST20-0014, should be written on all correspondence regarding this matter.**

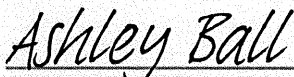
Issued by the Director of the Division of Underground Storage Tanks, Tennessee Department of Environment and Conservation, on this 10th day of June, 2020.



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

Reviewed by:



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Ashley Ball (Jun 11, 2020 09:30 CDT)

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Ashley J. Ball  
BPR# 025250  
Assistant General Counsel  
Department of Environment & Conservation  
312 Rosa L. Parks Avenue, 2d Floor  
Nashville, Tennessee 37243  
615-532-0142  
[Ashley.Ball@tn.gov](mailto:Ashley.Ball@tn.gov)