

STATE OF TENNESSEE

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

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|--------------------------|---|-----------------------------------|
| IN THE MATTER OF: |) | DIVISION OF UNDERGROUND |
| |) | STORAGE TANKS |
| RUMI STORES, INC. |) | |
| |) | CASE NO. UST20-0068 |
| RESPONDENT |) | FACILITY: KANGAROO EXPRESS |
| | | #3566 |

AGREEMENT AND ORDER

On June 26, 2020, David W. Salyers, P.E. ("Commissioner") issued an Order and Assessment was issued to RUMI STORES, INC. ("Respondent"). The Respondent filed a timely appeal that was received on or about August 13, 2020. Pursuant to Tennessee Code Annotated (Tenn. Code Ann.) sections 4-5-105 and 68-215-119(b), the Commissioner and the Respondent have reached a settlement. To implement this settlement: (1) the Commissioner has agreed and by entering into this Settlement Agreement and Order does hereby also dismiss the June 26, 2020 Order; and (2) the Respondent has agreed and by entering into this Settlement Agreement and Order does also hereby waive its right to a contested case hearing before the Board in this matter and withdraws its appeal of the June 26, 2020 Order. This Settlement Agreement and Order resolves and supersedes the June 26, 2020 Order. The Parties 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.

The Respondent, RUMI STORES, INC., is a corporation created in the State of Tennessee and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of four underground storage tank ("UST") systems located at 2374 Old Fort Parkway, Murfreesboro, Tennessee, 37128. Service of process may be made on the Respondent's Registered Agent, Mukesh Chaudhary, at 3003 Spottswood Circle, Murfreesboro, TN 37128.

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 May 29, 2019, the Division received a Buyer's Notification for Underground Storage Tanks form, signed by M. Chaudhary, listing the Respondent as the owner of the four UST systems located at 2374 Old Fort Parkway, Murfreesboro, Tennessee, 37128. The facility ID number is 5-750403.

VI.

On or about September 27, 2019, Division personnel contacted Mrs. Dhara Chaudhary and Bruce Hill, with Hinderliter Construction (compliance vendor) by phone and scheduled a compliance inspection to be conducted on October 23, 2019. On or about October 2, 2019, Division personnel also sent a letter confirming the inspection date.

VII.

On or about November 1, 2019, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

- Violation #1: Failure to monitor tanks at least monthly in accordance with Rule 0400-18-01-.04(2)(a). Specifically, at the time of the inspection, Automatic Tank Gauge (ATG) monthly leak tests for Tank 3A (10,000-gallon gasoline) were not available for Division review.
- Violation #2: Failure to conduct annual line tightness 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 the inspection, sensor function tests had not been completed within the past 12 months, the monitoring console and sensors did not appear to be functioning properly, and the secondary containment sumps did not appear to be liquid tight.

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 line leak detector test results for Tank 3A was not available for Division review.

VIII.

On or about November 12, 2019, 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 December 12, 2019, to document correction of the violations. U.S. Postal Service tracking records delivery on November 18, 2019. On or about November 13, 2019, Division personnel also sent an electronic copy of the letter to Bruce Hill.

IX.

On or about December 10, 2019, Division personnel contacted the Respondent via electronic mail reminding the Respondent of the compliance due date of December 12, 2019.

X.

On or about December 10, 2019, Division personnel received a telephone call from Bruce Hill requesting an extension of the compliance due date.

XI.

On or about December 20, 2019, Division personnel sent a Compliance Documentation Extension Request - Approved letter to the Respondent. A new compliance due date was set for January 13, 2020. On the same date, Division personnel also sent an electronic copy of the letter to Bruce Hill.

XII.

On or about December 26, 2019, the Division received compliance documentation addressing some of the violations discovered at the time of inspection. The following documentation was received:

- Annual Electronic Interstitial Monitoring Test Report
- Liquid Status Report
- Alarm History Report
- Tank Tightness Test History Report for Tank 3A with passing November 2019 and December 2019

XIII.

On or about December 30, 2019, Division personnel contacted Bruce Hill via telephone to discuss remaining compliance documentation needed to address the violations found during the inspection. The following documentation was requested:

- Line Leak Detector test results for Tank 3A
- Hydrostatic Test results for all secondary containment sumps
- Monthly release detection test results for Tank 3A for January 2020

Mr. Hill stated the Submersible Turbine Pump (STP) for Tank 3A did not have power and the line leak detector could not be tested. The tank would be emptied to less than 1 inch and a Notification Form submitted changing the status of the tank to Temporarily Out of Service (TOS). Mr. Hill also stated the liquid in the secondary containment sumps had been removed and he would submit photographs of the clean sumps.

XIV.

On or about December 31, 2019, Division personnel received electronic mail from Bruce Hill restating that the Tank 3A STP did not have power and could not conduct line leak detector testing. The January 2020 release detection test results for Tank 3A were to be submitted before the tank is emptied and a notification form submitted changing the status of the tank.

XV.

On or about January 24, 2020, Division personnel contacted Bruce Hill via electronic mail requesting the release detection test results for Tank 3A and the Notification form to change the status of the tank to TOS.

XVI.

On or about February 18, 2020, Division personnel contacted Bruce Hill and the Respondent via electronic mail requesting the release detection test results for Tank 3A and the Notification form to change the status of the tank to TOS.

XVII.

On or about March 9, 2020, 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 March 12, 2020.

XVIII.

On or about March 26, 2020, Division personnel sent a Notice of Violation certified letter to the Respondent. The letter cited the violations discovered during the inspection and during the enforcement review and required the Respondent to submit documentation to the Division by April 28, 2020, to document correction of the violations.

The following violations were added during the enforcement review:

Violation #4: Failure of a facility having one or more petroleum UST systems to have one or more persons designated as Class A, Class B, and Class C Operators in accordance with Rule 0400-18-01-.16(1)(a). Specifically, no Class A or Class B Operator has been designated for the facility. Also, documentation of Class C Operator signage and/or manual was not available for Division review.

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).

XIX.

After the issuance of the Order and Assessment on June 26, 2020, the Respondent performed all actions necessary to correct the outstanding violation(s) and to bring the facility into full compliance with regulatory requirements. Additionally, the Respondent provided the Division with documentation of the corrective action performed to establish a return to full compliance.

VIOLATIONS

XX.

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;

XXI.

By failing to monitor tank at least monthly, 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).

XXII.

By failing to conduct 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.

XXIII.

By failing to have one or more persons designated as Class A, Class B, and Class C Operators, the Respondent has 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 Operator(s).

XXIV.

By failing 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 TERMS, ORDER AND ASSESSMENT

XXV.

WHEREFORE, PREMISES CONSIDERED, the Director of the Division of Underground Storage Tanks orders, and the Respondent now agree as follows:

1. The Respondent shall pay civil penalties in the amount of \$18,000, the same amount set forth in the June 26, 2020 Order, as follows:
 - a. The Respondent shall pay an upfront civil penalty in the amount of \$3,360 within 30 days following the effective date of this agreement.
 - b. The Respondent shall pay the remaining civil penalty in the amount of \$14,640, if and only if, any one of the following occurs:
 - i. The Respondent fails to comply with paragraph 1a. herein;
 - ii. The Respondent fails to comply with paragraph 2, herein;
 - iii. The Respondent fails to comply with paragraph 3, herein; or
 - iv. TDEC discovers **an Automatic Enforcement Referral Violation** at the subject facility within a one-year period commencing upon the effective date of this Settlement Agreement and Order. *See* List of Automatic Enforcement Violations set forth herein.
2. The Respondent shall attend **TDEC's "Tank School"** within three months of the effective date of this Settlement Agreement and Order. Should the Respondent transfer the UST systems and Subject Property, the Respondent shall be relieved of this training requirement. However, in the event of such a transfer, the Respondent shall timely submit a proper notification form to the Division within thirty (30) days following a change in ownership or any other change in the status of the UST systems at the Subject Property as required by applicable law. *See*, Tenn.

Code Ann. § 68-215-106(b)(3). See also, Tenn. Comp. R. & Regs. 0400-18-01-.03(1)(g).

3. Within 30 days following the effective date of this agreement, the Respondent shall also pay \$210 to partially reimburse the Division for expenses the Division incurred as a result of taking this enforcement action.
4. This Settlement Agreement and Order 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 Settlement Agreement and Order.
5. 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.
6. This Settlement Agreement and Order shall be governed by and interpreted according to the laws of the State of Tennessee.
7. 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.
8. The effective date of this Settlement Agreement and Order shall be the date it is approved and signed by both parties.
9. 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.

10. 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, 10th Floor, Nashville, Tennessee 37243. The case number, "**UST20-0068**" 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, the Respondent 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.

RUMI STORES, INC., RESPONDENT

Mukesh Chaudhary
SIGNATURE

05/25/22
DATE

By: Mukesh Chaudhary

Title: President

TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION:

Stan R. Boyd
SIGNATURE

May 25, 2022
DATE

By: Stan R. Boyd
Print Name

Title: Director

| LIST OF AUTOMATIC ENFORCMENT VIOLATIONS | | |
|---|---|---|
| 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 |
| al Red Tag Removal | Tenn. Code Ann. § 68-215-106(c)-(d) | Tennessee Code Annotated |