



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Underground Storage Tanks
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 12th Floor
Nashville, Tennessee 37243

August 24, 2020

Haywood County Board of Education
c/o Joey Hassell, Superintendent
900 East Main Street
Brownsville, Tennessee 38012

Certified Mail No. 9315 4699 0430 0074 5471 16

Re: Haywood County Board of Education
900 East Main Street
Brownsville, Tennessee 38012
Facility ID # 8-380092
Case # UST20-0073

Dear Mr. Hassell:

Enclosed is an Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks. The violation was discovered during a facility inspection conducted on January 7, 2020. Specifically, Division personnel discovered:

Violation #1: Failure to conduct release detection monitoring at least monthly for releases using on of the methods listed in subparagraphs (3)(c) through (f) of this rule in accordance with Rule 0400-18-01-.04(2)(a). Specifically, at the time of inspection, 10 months of release detection records for Tank #3A (12,000 gallon gasoline) were not available for review.

<u>Individual Civil Penalty Amount for Violation</u>	<u>Multiplication Factor</u>	<u>Total</u>
\$3,200.00	1	\$3,200.00

Total Amount of your Civil Penalty: \$3,200.00

The record reflects that, upon being notified, you performed the necessary actions to address the violation and returned to compliance. The Division is appreciative of your effort to return to compliance. For this reason, please note that the enclosed Order provides that you may resolve this matter without appeal for a **reduction of up to one hundred percent** in the above civil penalty.

Please carefully review the enclosed Order, including the Options set out in Section XIV., and the Notice of Rights, which explains the appeal process. If you elect Option A or Option B, then you must submit payment, on or before the 30th day after receipt of this Order. Payment shall be submitted to the following address:

Department of Environment & Conservation
Division of Fiscal Services – Fee Section
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 10th Floor
Nashville, Tennessee 37243

Payment of the civil penalty shall be made payable to the “Treasurer, State of Tennessee”. The case number shown on the first page of the enclosed Order should be written on said payment(s).

If you accept Option C, the Division’s offer to resolve this matter by attending Underground Storage Tank Training, then you must return the enclosed REQUEST TO ATTEND UNDERGROUND STORAGE TANK TRAINING form on or before the 30th day after receipt of this Order. Return the request form to the following address:

Ethan Ralph
Nashville Environmental Field Office
711 R.S. Gass Boulevard
Nashville, Tennessee 37216

If you decline the options set out in Section XIV., then you may choose to exercise your right to appeal by the deadline stated in the Notice of Rights.

If you neither accept the Division’s offer nor timely appeal, then the entire civil penalty amount of \$3,200.00 will become due and subject to collection.

If you have any questions about this matter, please call Ethan Ralph at (615) 687-7094.

Sincerely,



Stanley R. Boyd
Director

cc: Enforcement file
Jackson Environmental Field Office

AUTOMATIC ENFORCEMENT VIOLATIONS		
Violation	State Cite	Rule Section
Failure of tanks installed on or after July 24, 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 on or after July 24, 2007.	0400-18-01-.02(2)(a)5	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed on or after July 24, 2007 to be secondarily contained.	0400-18-01-.02(2)(b)1	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed on or after July 24, 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 overflow 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

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
HAYWOOD COUNTY BOARD OF)	
EDUCATION)	
)	CASE NO. UST20-0073
RESPONDENT)	FACILITY: HAYWOOD COUNTY BOARD OF
		EDUCATION

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 particular aspects of the Act.

II.

Haywood County Board of Education ("Respondent") is a department of the Haywood County government and the registered owner of two underground storage tank ("UST") systems located at 900 East Main Street, Brownville, Tennessee 38012. Service of process may be made on the Respondent through Mr. Joey Hassell, Superintendent of Haywood County Schools, at the facility address.

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 underground storage tanks 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. section 68-215-103(11) and has violated the Act as hereinafter stated.

FACTS

V.

On or about August 8, 2018, the Division received a Notification for Underground Storage Tanks form, signed by Jeremiah Cavitt ("Authorized Representative"), listing the Respondent as the owner of the two UST systems located at 900 East Main Street, Brownville, Tennessee 38012. The facility ID number is 8-380092.

VI.

On or about November 21, 2019, Division personnel contacted the Authorized Representative and scheduled a compliance inspection to be conducted on December 20, 2019. Division personnel also sent a letter confirming the inspection date.

VII.

On or about January 7, 2020, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

Violation #1: Failure to conduct release detection monitoring at least monthly for releases using one of the methods listed in subparagraphs (3)(c) through (f) of Rule 0400-18-01-.04(2)(a). Specifically, at the time of inspection, 10 months of release detection records for Tank #3A (12,000 gallon gasoline) were not available for review.

Violation #2: Failure to provide 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 inspection, it was discovered that the automatic tank gauge (“ATG”) console for Tank #4A (12,000 gallon diesel) was powered off and unable to power on. Inventory reports indicated that power was supplied to the ATG a few hours prior to the compliance inspection.

Violation #3: Failure to keep a log of monthly inspections of spill catchment basins for 12 months in accordance with Rule 0400-18-01-.02(3)(b)4. Specifically, at the time of inspection, monthly spill bucket inspection logs were not available for review. Division personnel assisted the Authorized Representative with completing spill bucket logs for January 2020.

- This violation was addressed at the time of inspection.

Violation #4: Failure to remove dispenser cover and visually inspect for releases, seeps, drips at least quarterly in accordance with Rule 0400-18-01-.04(1)(e). Specifically, at the time of inspection, quarterly dispenser inspection logs were not available for review. Division personnel assisted the Authorized Representative with completing dispenser inspection logs for January 2020.

- This violation was addressed at the time of inspection.
- This violation was cited in error as Rule 0400-18-01-.02(3)(b)4.

VIII.

On or about February 6, 2020, Division personnel sent a Results of Compliance Inspection certified letter to the Authorized Representative. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by April 10, 2020, to demonstrate compliance. U.S. Postal Service tracking records delivery on February 12, 2020.

IX.

On or about April 15, 2020, Division personnel sent a Results of Compliance Inspection- No Response Received letter to the Authorized Representative. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by April 10, 2020, to demonstrate compliance.

X.

On or about April 21, 2020, the Division received compliance documentation addressing the violations discovered at the time of inspection. The Division received passing ATG records for both tanks for January, February, and March 2020 and a work order from American Petroleum Sales and Service stating the fuse was replaced on the ATG console for Tank #4A. The documentation confirmed that Violation #1 and Violation #2, discovered during the inspection, had been addressed and the facility had returned to operational compliance.

XI.

On or about April 22, 2020, Division personnel sent an Enforcement Action Notice letter to the Respondent. The letter cited the violations discovered during the inspection and the response received by the Division to address the violations. The letter was also sent to the Authorized Representative via email.

VIOLATION

XII.

By failing to operate a petroleum underground storage tank 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;

XIII.

By failing to monitor a 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).

ORDER AND ASSESSMENT

XIV.

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. The Respondent is assessed a civil penalty of \$3,200.00 and must complete one of the following options:

Option A. Full Civil Penalty Payment Option:

On or before the 30th day after receiving this Order, the Respondent shall pay the **full civil penalty** in the amount of \$3,200.00.

Option B. Twenty Percent Civil Penalty Payment Option:

- i. On or before the 30th day after receiving this Order, the Respondent shall pay 20% of the civil penalty, \$640.00.
- ii. If the Respondent timely pays the 20% payment, then the Respondent shall pay the remaining 80% of the civil penalty, \$2,560.00, if and only if, the Division determines that an automatic enforcement violation has occurred at the facility during a one-year period to commence on the date of receipt of this Order. Payment of the remaining 80% of the civil penalty shall be due within 30 days after the automatic enforcement violation is discovered. A list of the violations that are treated as automatic enforcement violations for the purposes of this Order was enclosed with the Order.
- iii. In the event that the Division discovers any violation, including non-automatic enforcement violations, it reserves the right to assess additional civil penalties and to take any and all other enforcement actions that it deems necessary.

Option C. Underground Storage Tank Training Option:

- i. On or before the 30th day after receiving this Order, the Respondent shall return a signed Request to Attend Underground Storage Tank Training form to the address that appears on the request form, which is enclosed. The Respondent must attend Underground Storage Tank Training within **one year** after receiving this Order.
- ii. If the Respondent timely submits the Request to Attend Underground Storage Tank Training, then the Respondent shall pay the **full civil penalty**, if and only if, one of the following occurs:
 - a. The Respondent fails to successfully complete attendance at Underground Storage Tank Training. If the Respondent does not successfully attend the

training, then payment of the full civil penalty shall be due within 30 days after expiration of the one-year period; or

- b. The Division determines that an automatic enforcement violation has occurred at the facility during a one-year period to commence on the date of receipt of this Order. Payment of the civil penalty shall be made within 30 days following discovery of the automatic enforcement violation. A list of the violations that are treated as automatic enforcement violations for the purposes of this Order was enclosed with the Order.
- iii. In the event that the Division discovers any violation, including non-automatic enforcement violations, it reserves the right to assess additional civil penalties and to take any and all other enforcement actions that it deems necessary.

2. 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.

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(s). 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(s) 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(s) 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 (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 Floor, Nashville, Tennessee 37243-1548. The petition may be mailed or delivered to this address, or it may be sent to 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 Ethan Ralph, Nashville Environmental Field Office, 711 R.S. Gass Boulevard, Nashville, Tennessee 37216. Attorneys should contact the undersigned counsel of record. **The case number, UST20-0073, 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 24th day of August, 2020.



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

Reviewed by:



[Ashley Ball \(Aug 31, 2020 12:13 EDT\)](#)

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



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Underground Storage Tanks
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 12th Floor
Nashville, Tennessee 37243

REQUEST TO ATTEND UNDERGROUND STORAGE TANK TRAINING ONLINE

Please complete this form to attend training on the proper operation of underground storage tanks in accordance with rules established by the State of Tennessee. This form serves as a reservation to attend UST systems and maintenance training online with the Division of Underground Storage Tanks.

Please use an active email address when completing this form as it will be the primary way the Division will provide information about the class and the web link to attend. Please carefully read the requirements below to successfully attend online Tank School. If any of these requirements cannot be met and you would still like to attend Tank School, please check this box:

Tank school classes are offered on specific dates throughout the year. All classes are from 8:30 am to 4:00 pm Central time / 9:30 am to 5:00 pm Eastern time. The Division usually schedules 3 tank school classes per year with make-up sessions available as needed. After receipt of this completed form, the Division will schedule a class with you.

I, _____ (Please Print Your Name), request to attend training on the proper operation of underground storage tanks.

Name: _____ Date: _____

My contact information is: Email: _____

Telephone: _____

Address: _____

Mail or Email this Request to:
Ethan Ralph
Nashville Environmental Field Office
711 R.S. Gass Boulevard
Phone #615-687-7094
Ethan.Ralph@tn.gov

REQUIREMENTS TO ATTEND ONLINE TANK SCHOOL

- ✓ Access to a computer and reliable/good internet connection [1.0 Mbps (Receive) and 1.5 Mbps (Send) is recommended].
- ✓ Access to reliable (charged/wired) audio source (i.e., cell phone, computer speakers, headset, etc.)
- ✓ Valid email address
- ✓ Ability to complete an online pre-test prior to class and an online post-test after the class presentation.
- ✓ Ability to participate and attend entire online class (approximately 6 hours).