

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

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
DAM MARINA, INC.,)	
DARRELL JONES,)	
)	CASE NO. UST22-0090
RESPONDENTS.)	FACILITY: HALES BAR MARINA

SETTLEMENT AGREEMENT AND ORDER

On September 16, 2022, the Department of Environment and Conservation (“Department”) Division of Underground Storage Tanks (“Division”) issued Order and Assessment number UST22-0090 (“Order”) to Dam Marina, Inc., and Darrell Jones (“Respondents”). A private process server completed service of the Order on September 17, 2022, and The Respondent electronically filed an appeal of the Order on October 26, 2022. Pursuant to Tennessee Code Annotated sections 4-5-105 and 68-215-119(b), the Division and the Respondent have reached a settlement. By executing this settlement, (1) the Division agrees to dismiss the Order and that this settlement resolves and supersedes the Order, and (2) the Respondent agrees that it waives its right to a contested case hearing before the Underground Storage Tanks and Solid Waste Disposal Control Board. The Division alleges as follows:

PARTIES

I.

David W. Salyers, P.E., is the Commissioner of the Department and is charged with enforcing the Tennessee Petroleum Underground Storage Tank Act (“Act”), Tenn. Code Ann. §§ 68-215-101 to -129. Stanley R. Boyd is the duly appointed Director of the Division and has received written delegation from the Commissioner to administer and enforce the Act.

II.

Dam Marina, Inc. is a corporation created in the State of Tennessee and is properly registered to conduct business in Tennessee. Dam Marina, Inc. is the registered owner of two underground

storage tank (UST) systems located at 1265 Hales Bar Road, Guild, Tennessee 37340. Darrell Jones is the current President of Dam Marina, Inc.

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 both “persons,” Tenn. Code Ann. § 68-215-103(11), and have violated the Act.

FACTS

V.

On June 25, 2021, Division personnel contacted the facility by phone and scheduled a compliance inspection to be conducted on July 13, 2021. On June 25, 2021, Division personnel also sent a letter confirming the inspection date. On July 13, 2021, Division personnel performed a compliance inspection at the subject facility.

VI.

On August 31, 2021, Division personnel sent a Results of Compliance Inspection – Action Required letter to Mr. Jones. The letter cited the violations discovered during the inspection and required the Respondents to submit documentation to the Division by October 1, 2021, to document correction of the violations.

VII.

On October 4, 2021, Division personnel sent a Results of Compliance Inspection – No Response Received letter to Mr. Jones. The letter cited the violations discovered during the inspection

and required the Respondents to submit documentation to the Division by November 4, 2021, to document correction of the violations.

VIII.

On November 17, 2021, Division personnel sent a Follow-up Letter and Enforcement Action Notice certified letter to Mr. Jones. The letter cited the violations discovered during the inspection and the Respondents' failure to return to compliance.

IX.

On December 8, 2021, Division personnel sent a certified Notice of Violation letter to Mr. Jones. The letter cited the violations discovered during the inspection and required the Respondents to submit documentation to the Division by January 7, 2022, to document correction of the violations. U.S. Postal Service tracking records show delivery of the letter on December 10, 2021. None of the required documentation was submitted by the deadline.

VIOLATIONS

X.

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondents violated section 68-215-104(2) of the Act, which states:

It is unlawful to . . . [c]onstruct, alter or operate a petroleum underground storage tank in violation of this chapter or the rules or regulations established pursuant thereto[.]

XI.

By failing to conduct release detection monitoring at least monthly for releases, the Respondents have 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).

XII.

By failing to conduct an annual line tightness test or do monthly monitoring on pressurized underground piping, the Respondents have 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.

XIII.

By failing to test line leak detectors annually, the Respondents have 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 gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with guidance provided by the Division.

XIV.

By failing to install, calibrate, operate, or maintain release detection method for tank, the Respondents have violated Rule 0400-18-01-.04(1)(a)2., 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:

2. Is installed and calibrated in accordance with the manufacturer's instructions and is operated and maintained in accordance with one of the

following:

(i) The manufacturer's instructions;

(ii) A code of practice developed by a nationally recognized association or independent testing laboratory; or

(iii) Requirements determined by the Division to be no less protective of human health and the environment than the two options listed in subparts (i) and (ii) of this part.

XV.

By failing to ensure that the cathodic protection system is tested every three years, the Respondents have violated Rule 0400-18-01-.02(4)(c)2.(i), which states:

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

(4) Corrosion protection.

(c) Operation and maintenance of corrosion protection.

All owners and/or operators of metal UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in service in accordance with paragraph (4) of Rule 0400-18-01-.07:

2. All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

- (i) All cathodic protection systems shall be tested within six months of installation and at least every three years thereafter[.]

XVI.

By failing to inspect the impressed current corrosion protection system every 60 days, the Respondents have violated Rule 0400-18-01-.02(4)(c)4., which states:

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

- (4) Corrosion protection.
 - (c) Operation and maintenance of corrosion protection.

All owners and/or operators of metal UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in service in accordance with paragraph (4) of Rule 0400-18-01-.07:

4. UST systems with impressed current cathodic protection systems shall also be inspected every 60 days to ensure the equipment is operating properly. The results of the inspection shall be recorded in a format established by the Division and in accordance with the instructions provided by the Division.

XVII.

By failing to comply with requirements concerning design, construction, utilization, and or upgrade of corrosion protection for piping, the Respondents have violated Rule 0400-18-01-.02(4)(b), which states, in part:

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

- (4) Corrosion protection.
 - (b) Piping construction.

Piping that routinely contains petroleum and is in contact with the ground or with standing water or other liquids shall be properly designed and constructed and/or properly upgraded. However, the presence of condensate within a sump or containment area shall not constitute contact with standing water. . . .

XVIII.

By failing to keep a log of monthly inspections of spill catchment basins for 12 months, the Respondents have violated Rule 0400-18-01-.02(3)(b)4., which states:

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

(3) Spill and overflow prevention.

(b) Operating requirements.

4. Spill catchment basins shall be visually inspected by the owner and/or operator at least once per month to assure the integrity of the storage space provided for spill containment. A log of these inspections showing at a minimum the last 12 months shall be maintained by the owner and/or operator. Unless directed or allowed to do otherwise by the division the log shall be maintained in a format established by the division and in accordance with guidance provided by the division.

XIX.

By failing to maintain a log of at least the last 12 months of visual inspections for seeps and drips after removing the dispenser cover, the Respondents have violated Rule 0400-18-01-.04(1)(f), which states:

0400-18-01-.04 RELEASE DETECTION.

(1) General requirements for release detection.

(f) Under-dispenser containment sumps for motor fuel dispensers required by subparagraph (1)(c) or paragraph (6) of Rule 0400-18-01-.02 to be secondarily contained in accordance with subparagraph (2)(c) of Rule 0400-18-01-.02 shall be visually inspected at least quarterly, that is, at least once every three months. A log of these inspections, showing at a minimum the last 12 months, shall be maintained by the owner and/or operator. The visual inspection shall check for the presence of petroleum and/or water in the sumps. If liquid is observed in the dispenser sump, the liquid shall be removed from the sump in such a manner as to prevent the release of petroleum into the environment.

XX.

By failing to keep spill catchment basins free of water, dirt, debris, etc., the Respondents have violated Rule 0400-18-01-.02(3)(b)3., which states:

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

- (3) Spill and overflow prevention.
 - (b) Operating requirements.

3. Owners and/or operators shall keep spill catchment basins free of water, dirt, debris, and/or other substances that could interfere with the ability of the catchment basin to prevent spills.

XXI.

By failing to report a change of status for a UST system within 30 days, the Respondents have violated Rule 0400-18-01-.03(1)(g), which states:

0400-18-01-.03 Notification, Reporting and Record Keeping.

- (1) Notification requirements.

(g) Any change in the status of the tanks at a petroleum UST facility shall be reported within 30 days of said change. This includes but is not limited to changes of ownership, upgrading or replacement of tanks, changes in mailing address, permanent closure of a tank compartment, and changes in service. Such reports shall be made using an amended notification form. In the case of a sale of tanks, the seller shall submit the notification form designated by the Division, completed in accordance with instructions provided by the Division, and shall also inform the buyer of the notification requirement.

XXII.

By failing of facility having one or more petroleum UST systems to have one or more persons designated as Class A, Class B Operators, the Respondents have violated Rule 0400-18-01-.16(1)(a).

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).

XXIII.

By failing to have a facility to meet Class C operator requirements by posting appropriate signage conspicuously, the Respondents have violated Rule 0400-18-01-.16(3)(c).

0400-18-01-.16 Certified Operator Program.

- (3) Tank Owner Responsibilities

- (c) If a UST facility has a person(s) on site, at least one person on site must be a Class C Operator whenever the facility is operating. A sign or instruction manual must be placed where the Class C operator would be expected to see it during the normal course of their work. At a minimum, it must include the following:
 - 1. Employee's role in responding to spills and overfills;
 - 2. Procedures for handling warnings, alarms, and response from leak detection console (if applicable);
 - 3. Name and number of contact person for emergencies and monitoring equipment alarms;
 - 4. Local emergency numbers; and
 - 5. An instruction to maintain a safe distance from any potential hazards.

XXIV.

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 T.C.A. §§ 68-215-101 et seq.

XXV.

By failing to install piping in accordance with the manufacturer's installation instructions, the Respondents have violated Rule 0400-18-01-.02(1)(b), which states:

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

- (1) Installation.
 - (b) All underground storage tank systems shall be installed in accordance with the manufacturer's installation instructions.

ORDER AND ASSESSMENT

XXVI.

Pursuant to sections 68-215-107, -114, and -121 of the Act, I, Stanley R. Boyd, hereby execute the following settlement:

1. The Respondent shall pay \$5,520.00 to the following address:

Treasurer, State of Tennessee
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

This payment shall be made in 12 installments of \$460.00 with the first installment due within 31 days of the settlement's date of execution.

DEPARTMENT'S RESERVATION OF RIGHTS

In entering this settlement, the Department does not 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 will be considered as a mitigating factor in determining the need for future enforcement action.

RESPONDENT'S RESERVATION OF RIGHTS

The Respondent does not admit or deny the factual allegations or the alleged violations of law contained in this settlement. The Respondent reserves its right to contest the factual allegations and alleged violations contained in this settlement in any proceeding other than a proceeding brought by the Department to enforce the terms of this settlement.

Executed by the Director of the Division of Underground Storage Tanks, Department of Environment and Conservation, on December 14, 2023.



Darrell Jones, President
Dam Marina, Inc.
Respondents



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

Reviewed by:



Grant LeMaster Ruhl
BPR # 036182
Associate Counsel
Department of Environment and Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 313-5682
Grant.Ruhl@tn.gov