

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	
)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
)	
)	
DIAMOND INVESTMENT LLC,)	CASE NO. UST23-0151
)	
)	
RESPONDENT.)	FACILITY: DIAMOND INVESTMENT LLC

ORDER AND ASSESSMENT

David W. Salyers, P.E., Commissioner of the Tennessee Department of Environment and Conservation states:

PARTIES

I.

David W. Salyers, P.E., is the duly appointed Commissioner of the Department of Environment and Conservation ("Department") and is charged with administering and enforcing the Tennessee Petroleum Underground Storage Tank Act ("Act"), Tenn. Code Ann. §§ 68-215-101 to -204. Stanley R. Boyd is the duly appointed Director of the Division of Underground Storage Tanks ("Division") and has received written delegation from the Commissioner to administer and enforce the Act.

II.

Diamond Investment LLC ("Respondent") is a limited liability company created in Tennessee and is registered to conduct business in Tennessee. The Respondent is the registered owner of two underground storage tank ("UST") systems located in Shelby County at 6390 Highway 70, Bartlett, Tennessee 38134. Service of process may be made on the Respondent's Registered Agent, Siraj Hameed, at 6390 Summer Avenue, Bartlett, Tennessee 38134.

JURISDICTION

III.

When the Commissioner finds that the Act is being violated or that effective measures are not in place to comply with the Act, the Commissioner may issue an order for correction to the responsible party and assess civil penalties of up to \$10,000.00 for each day a violation exists. Tenn. Code Ann. §§ 68-215-114

and -121. If this Order becomes final, the Commissioner may affix a notice of petroleum delivery prohibition (also known as a “red tag”) to the facility fill ports or dispensers or give notice on the Department’s website of petroleum delivery prohibition. Tenn. Code Ann. § 68-215-106(c). Rules governing USTs have been promulgated and are effective as Tenn. Comp. R. & Regs. 0400-18-01-.01 to -.17 (“Rules”). Tenn. Code Ann. § 68-215-107(f).

IV.

The Respondent is a “person,” Tenn. Code Ann. § 68-215-103(11), a “responsible party,” Tenn. Code Ann. § 68-215-103(17)(A), and has violated the Act.

FACTS

V.

On February 17, 2017, the Division received a Notification for Underground Storage Tanks form, listing the Respondent as the owner of the two UST systems located at 6390 Highway 70, Bartlett, Tennessee 38134. The facility ID number is 9-792643.

VI.

On January 20, 2023, Division personnel performed a compliance inspection at the Facility. The inspector discovered several violations.

VII.

Division personnel sent a Results of Compliance Inspection – Action Required letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by March 6, 2023, to document correction of the violations. The letter also required the Respondent to complete Operator Re-Training by May 3, 2023.

VIII.

Division personnel sent a Results of Compliance Inspection – No Response Received letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by April 7, 2023, to document correction of the violations. The letter also required the Respondent to complete Operator Re-Training by May 3, 2023.

IX.

Division personnel sent a Follow-up Letter and Enforcement Action Notice letter to the Respondent. The letter cited the violations discovered during the inspection and the Respondent's failure to return to compliance. The letter also required the Respondent to complete Operator Re-Training by May 3, 2023.

X.

Division personnel sent a Notice of Violation letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division June 8, 2023, to document correction of the violations. The letter also required the Respondent to complete Operator Re-Training by August 7, 2023.

XI.

When the Respondent failed to meet the June 8, 2023 and August 7, 2023, deadlines, the Respondent violated Rule 0400-18-01-.03(2) and Rule 0400-18-01-.16(4).

XII.

To date, the Respondent has not cooperated and remains in non-compliance with the Division.

VIOLATIONS

XIII.

By failing to operate a UST in compliance with the Act, the Respondent violated Tennessee Code Annotated 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[.]

XIV.

By failing to designate a Class B operator, the Respondent 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).

XV.

By failing to install an adequate overfill prevention device, the Respondent violated Rule 0400-18-01-.02(3)(a)1.(ii), which states:

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

(3) Spill and overfill prevention.

(a) Equipment.

1. Except as provided in parts 2. and 3. of this subparagraph, to prevent spilling and overfilling associated with petroleum transfer to the UST system, owners and/or operators shall use the following spill and overfill prevention equipment:

(ii) Overfill prevention equipment that will...

XVI.

By failing to successfully complete retraining to the appropriate level of operator Class within a timeframe determined by the Division when a significant operational compliance violation is discovered, the Respondent violated Rule 0400-18-01-.16(4), which states:

0400-18-01-.16 CERTIFIED OPERATOR PROGRAM.

(4) Retraining

If the division determines that the UST system is out of compliance at any time, then successful completion of operator retraining appropriate to the level of the operator Class must be completed within 30 days from the date the division determines that the UST system is out of compliance.

XVII.

By failing to cooperate with the Division by failing to provide documents, testing or monitoring records to the Division, the Respondent 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.

ORDER AND ASSESSMENT

XVIII.

Pursuant to sections 68-215-107, -114, and -121 of the Act, the Respondent is issued the following Order and Assessment ("Order"):

1. If the Respondent fails to comply with this Order 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 or dispensers will be red tagged until compliance is achieved.**

Tenn. Code Ann. § 68-215-106(c).

2. **Civil Penalty:** The Respondent shall pay a total civil penalty of \$8,400.00 on or before the thirty-first day after receipt of this Order. This amount consists of:

- i. One violation assessed at \$3,200.00 for failing to designate a Class B operator for the facility.
- ii. One violation assessed at \$3,800.00 for failing to successfully complete retraining to the appropriate level of operator Class within a timeframe determined by the Division when a significant operational compliance violation is discovered.
- iii. One violation assessed at 20% per outstanding violation for a total of \$1,400.00 for failing to cooperate with the Division.
- iv. All payments should be sent to the following address:

Treasurer, State of Tennessee
Division of Fiscal Services – Consolidated Fees Section
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Ave., 10th Floor
Nashville, Tennessee 37243

3. **Remedial Action:** 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 remedial action performed; the documentation shall be sufficient to establish a return to full compliance.

- i. On or before the 90th day after receipt of this Order, the Respondent shall complete operator retraining by choosing one of the two following options:
 - a. Complete online training (Tennessee Tank Helper) anytime, using this link:
 - I. <https://www.tn.gov/environment/ust/operator-training/tank-helper.html>. If the Respondent does not already have an account, the Respondent must create one and complete all relevant trainings for the site.

- b. Complete virtual training (Tennessee Tank School) by registering for the upcoming class using this link:
 - i. <https://www.tn.gov/environment/ust/operator-training/tank-school.html>. Tank school classes are held on the second Wednesday of the month. The Respondent must register to attend the class at least one week prior to the class and complete the pre-test. A post-class test score of 70 or above is required.
 - ii. Designate a Class B operator at the above referenced Tennessee Tank Helper link.
- 4. 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 recovery of costs.
- 5. With the exception of the deadline for filing the appeal of this Order, the Department may extend the compliance dates contained within this Order for a fixed time period for good cause shown by the Respondent. 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 Department 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 thirty days after that deadline. The request for an extension of time does not change the deadline to submit an appeal. See Notice of Rights.

RESERVATION OF RIGHTS

In issuing this 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, 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 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. 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 thirty days of the date the Respondent received this Order or this Order will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Judge as a contested case hearing. Tenn. Code Ann. § 68-215-119; Tenn. Code Ann. §§ 4-5-301 to -326 (the Uniform Administrative Procedures Act); and Tenn. Comp. R. & Regs. Chapter 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 Respondent may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondent (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue a contested case 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 Administrative Judge has the authority to affirm, modify, or deny the Order. Furthermore, the Administrative Judge 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 Administrative Judge 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, Division of Underground Storage Tanks, Nashville Environmental Field Office, 711 R. S. Gass Boulevard, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, UST23-0151, 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 22nd day of November, 2023.



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

Reviewed by:



[George Bell \(Nov 29, 2023 21:21 CST\)](#)

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