

TDEC-AG COOPERATIVE ENFORCEMENT INITIATIVE- UNDERGROUND STORAGE TANKS

Karen H. Stachowski, Managing Legal Counsel
Tennessee Dept. of Environment & Conservation
Office of General Counsel

FOUR FOCUS AREAS

““And now that I have this position, I intend for our environmental enforcement, both civil and criminal, to be vigorous, working hand in hand with (TDEC).’” --Attorney General Robert Cooper, *The Commercial Appeal*, Richard Locker (Feb. 9, 2007)

IMPLEMENTATION

(1) REPEAT VIOLATORS

- *Cooper v. Coffman Oil Inc.*, Davidson County Chancery Court, No. 09-162-II
 - *Settlement: \$181,000 [\$105,000 non-contingent & \$76,000 contingent] & “Tank School”*

- *Cooper v. Willoughby, Inc.*, Davidson County Chancery Court, No. 09-1292-II
 - *Settlement: \$201,250 [\$50,312.50 non-contingent & \$150,937.50 contingent]*

- *Cooper v. Circle K Stores, Inc.*, Davidson County Chancery Court, No. 11-379-I

IMPLEMENTATION

(2) NON-OWNER/OPERATOR ACTIONS

- *Cooper v. Petroleum One Services & Sales, Inc. and Bruce W. Hill*, Davidson County Chancery Court, No. 2008-085.
 - Involving \$29,524.15 reimbursed costs

IMPLEMENTATION

(3) FALSE STATEMENTS

- *Cooper v. Bryan Oil, Inc. et al.*, Davidson County Chancery Court, No. 11-235-III

IMPLEMENTATION

(4) FALSE CLAIMS

- *Cooper v. Mixon-Nollner Oil Co., Inc, et al,*
Davidson County Circuit Court, No. 09-2031-II
 - Settlement with 2 of 4 defendants
 - \$73,573.00 [\$10,000 penalty + \$63,573.00 damages]
 - On-going litigation with remaining 2 defendants

FALSE CLAIMS—In Depth

- ❑ **Federal Statute – 31 U.S.C. §§ 3729, et seq.**
- ❑ **State Statute – T.C.A. §§ 4-18-101, et seq.**
- ❑ **Deficit Reduction Act 2005**

FALSE CLAIMS—In Depth

- ❑ Damages: Not less than 2x nor more than 3x the damages sustained because of act of person. [See, 31 U.S.C. § 3729(a)(1); TCA 4-18-103(b)]
- ❑ Civil Penalties: \$2,500 to \$10,000 per false claim [See, 31 U.S.C. § 3729(a)(1); TCA 4-18-103(a)]
- ❑ Liable for cost of a civil action brought to recover any of the penalties or damages. [See, 31 U.S.C. § 3729(a)(1); TCA 4-18-103(a)]

FALSE CLAIMS—In Depth

Important definitions [See, 31 U.S.C. § 3729(b); TCA 4-18-102]:

- **“Claim”** includes any request or demand for money, property or services made to any employee, officer or agent of the government, as well as its contractors, grantees or other recipient
 - If the money or property is to be spent to further a government program or its interest;
 - Where the government will reimburse that contractor, grantee or other recipient for any portion of the money, property or service

FALSE CLAIMS—In Depth

- Remedial Statute: Other Statutory Remedies Not Precluded
 - Common law causes still exist even if civil action is time barred.
 - You don't get to keep the government's property.

Criminal

Tennessee Petroleum Underground Storage Tank Act

- ❑ Misdemeanor provisions. T.C.A. 68-215-120(a).
- ❑ *Tennessee Petroleum Underground Storage Tank Act*— criminal felony provisions. T.C.A. 68-215-120(b).
 - Class E Felony
 - If expense from the Fund involved, offense grade in same manner as theft under 39-14-105(2)-(5).

Criminal

Non-Environmental Statutes

- ❑ Vandalism. T.C.A. 39-14-408
- ❑ Theft of Services. T.C.A. 39-14-104
- ❑ Forgery- falsified documents. T.C.A. 39-14-114
- ❑ Destruction of and tampering with governmental records. T.C.A. 39-11-106(15); 39-16-504
- ❑ Reckless Endangerment T.C.A. 39-13-103

Criminal

□ Plea Agreements

- *State of Tennessee v. Qahtan M. Alkabsh and Alhmed M. Alhadj*, Chester County, Case No. 08-CR-92.
 - T.C.A. 68-215-120(b) Allowing Petroleum into the environment.

□ Indictments

- *State of Tennessee v. William Stuart Packard*, Davidson County, Case No. 2010-D-3594
 - Forgery- falsified documents. T.C.A. 39-14-114
 - Governmental records. T.C.A. 39-11-106(15); 39-16-504
- *State of Tennessee v. William Timothy Wilson*, Madison County, Case No. 11-370-I
 - Forgery- falsified documents. T.C.A. 39-14-114

SUMMARY

TDEC-AG INITIATIVE: Four Focus Areas

- (1) Repeat Violators
- (2) Non-Owner/Operator Actions
- (3) False Statements
- (4) False Claims

TDEC-AG Cooperative Enforcement Initiative-Underground Storage Tanks

Karen H. Stachowski, Managing Legal Counsel
TN Dept. of Environment & Conservation
Office of General Counsel
Office Phone: 615-532-0114
Karen.Stachowski@tn.gov