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**RE: TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION V.
DEBORAH WOODY, APD Case No. 04.44-240718J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

**BEFORE THE TENNESSEE BOARD OF UNDERGROUND STORAGE TANKS
AND SOLID WASTE DISPOSAL CONTROL**

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
ENVIRONMENT AND
CONSERVATION,
*Petitioner,***

v.

**DEBORAH WOODY,
*Respondent.***

APD Case No. 04.44-240718J

INITIAL ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Currently pending is a Motion for Summary Judgment filed by the Petitioner on July 5, 2024. Respondent did not file a response. Based upon the facts and law, the Petitioner's Motion for Summary Judgment is **GRANTED**.

In support of its motion, Petitioner filed a Memorandum of Law, Respondent's Tenn. R. Civ. P. 56.03 Statement of Undisputed Facts, and the affidavits of Heather Mott, Ethan Ralph and Shelby Ward with supporting exhibits.

FINDINGS OF FACT

1. Deborah Woody ("Respondent") currently owns the Underground Storage Tank ("UST") systems located at 200 Highway 160, Newport, Tennessee 38721 ("the Facility"). (Aff. of Ethan Ralph ¶ 2, Ex. 7, Aff. of Shelby Ward ¶ 8, Ex. 11).
2. Respondent owned the UST systems at the facility on October 26, 2021. (Aff. of S. Ward ¶ 8, Ex. 11; See also Aff. of E. Ralph ¶ 2, Ex. 7).
3. The Facility has two UST systems: Tank 1A (gasoline) and Tank 2A (ULS Diesel). (Aff. of Heather Mott ¶ 7)

4. Underground Storage Tanks & Solid Waste Disposal Control Division (“Division”) personnel conducted a UST Operation Inspection at Respondent’s Facility on October 26, 2021. (Aff. of H. Mott ¶ 5, Ex. 2, Aff. of S. Ward ¶ 9, Ex. 11)

5. One purpose of the inspection was to ensure compliance with the Tennessee Petroleum Underground Storage Tank Act and implementing rules. (Aff. of H. Mott ¶ 4)

6. During the October 26, 2021 inspection, the inspector examined portions of the two UST systems at the Facility and on-site documentation related to the UST systems. (Aff. of H. Mott ¶ 6)

7. At the time of the inspection, the spill buckets on Tanks 1A and 2A contained liquid. (Aff. of H. Mott ¶ 8, Aff. of S. Ward ¶ 10, Ex. 11)

8. At the time of the inspection, monthly inspections of spill buckets on Tanks 1A and 2A had not been kept for the most recent 12 months. (Aff. of H. Mott ¶ 9, Aff. of S. Ward ¶ 11, Ex. 11)

9. At the time of the inspection, a cathodic protection system test had not been conducted within the last three years. The most recent cathodic protection system test was conducted on April 20, 2017. (Aff. of H. Mott ¶ 10, Aff. of S. Ward ¶ 12, Ex. 11)

10. At the time of the inspection, the cathodic protection rectifier was blocked by a water line and was not being inspected every 60 days. (Aff. of H. Mott ¶ 11, Ex. 3; See also Aff. of S. Ward ¶ 13, Ex. 11)

11. At the time of inspection, the meter calibration at the two dispensers at the Facility had not been conducted in 13 months (since September 2020). Meter calibration is required annually to maintain the required precision for statistical inventory reconciliation (“SIR”) for tanks and/or product lines. (Aff. of H. Mott ¶ 12-13; See also Aff. of S. Ward ¶ 14, Ex. 11).

12. At the time of inspection, quarterly seep and drip inspections of the area under the two dispensers had not been conducted during the most recent 12 months. (Aff. of H. Mott ¶ 14; *see also* Aff. of S. Ward ¶ 15, Ex. 11)

13. At the time of the inspection, neither SIR nor any other method of release detection had been used to monitor the tanks monthly for releases. The listed method of release detection for Tanks 1A and 2A at the facility is SIR. (Aff. of H. Mott ¶ 15-16, See Aff. of S. Ward ¶ 16, Ex. 11)

14. At the time of the inspection, line tightness testing had not been conducted on the product lines associated with Tanks 1A and 2A within the last 12 months. Historically, line tightness testing had been used as the release detection method for the product lines associated with Tanks 1A and 2A. (Aff. of H. Mott ¶ 17-18, See Aff. of S. Ward ¶ 17, Ex. 11)

15. At the time of inspection, line leak detector testing on the product lines associated with Tanks 1A and 2A had not been conducted in the last 12 months. (Aff. of H. Mott ¶ 19, Aff. of S. Ward ¶ 18, Ex. 11)

16. At the time of the inspection, the Facility had not designated a current A or B operator with the Division. (Aff. of H. Mott ¶ 20, Aff. of S. Ward ¶ 19-20, Ex. 11)

17. At the time of inspection, hydrostatic testing had not been conducted on the spill buckets for Tanks 1A and 2A. (Aff. of H. Mott ¶ 21, Aff. of S. Ward ¶ 21, Ex. 11)

18. At the time of inspection, overfill testing had not been conducted on the automatic shutoff valves on Tanks 1A and 2A. (Aff. of H. Mott ¶ 22, Aff. of S. Ward ¶ 22, Ex. 11)

19. On November 12, 2021, the Division sent a Results of Compliance Inspection Enforcement Action Notice letter to Respondent. In the letter, the Division cited the violations observed during the inspection and informed Respondent what actions needed to be done to correct the violations. (Aff. of H. Mott ¶ 23, Ex. 4)

20. To correct the violations observed during the inspection, the Division instructed

Respondent to:

- a. Remove liquid from the spill buckets and submit documentation to the Division.
- b. Begin conducting monthly spill bucket inspections on Form CN-2544 (the Monthly and Annual Walk-Through Inspection Form) and submit documentation to the Division.
- c. Conduct a new cathodic protection test, record the test results on Form CN-1309 (Impressed Current Cathodic Protection Survey), and submit the form to the Division.
- d. Use Form CN-2544 to document the cathodic protection rectifier inspection and submit to the Division.
- e. Conduct meter calibration in accordance with necessary requirements and submit documentation to the Division.
- f. Begin dispenser inspections on Form CN-2544 and submit documentation to the Division.
- g. Submit monthly SIR reports for the next three months. If an ATG is later installed at this facility, SIR can be stopped. An amended notification form will need to be submitted within 30 days of ATG installation changing the release detection method for Tanks 1A and 2A from "SIR" to "ATG."
- h. Conduct line tightness tests on the product lines associated with Tanks 1A and 2A and submit documentation to the Division.
- i. Conduct leak detector testing on the product lines associated with Tanks 1A and 1B and submit the results to the Division.
- j. Train A/B operator(s) and provide documentation of training to the Division.
- k. Conduct a spill bucket integrity test and submit the results to the Division.
- l. Provide documentation showing completion of a current overflow prevention equipment inspection and submit the results to the Division. (Aff. of H. Mott ¶24, Ex. 4, 5 and 6)

21. On March 21, 2022, the Division sent a Results of Compliance Inspection letter to Respondent. In the letter, the Division cited the violations observed during the October 26, 2021 inspection and notified Respondent that the Division required Respondent to submit documentation of the correction of the violations by April 22, 2022. (Aff. of H. Mott ¶ 25, Ex. 5)

22. Respondent did not submit documentation to the Division by April 22, 2022, documenting the correction of the violations Division personnel observed during the October 26, 2021 inspection. (Aff. of H. Mott ¶ 26)

23. On May 24, 2022, the Division sent a Results of Compliance Inspection – No Response Received letter to Respondent. In the letter, the Division cited the violations observed during the October 26, 2021 inspection and notified Respondent that no response to the previous letter had been received by the Division. The letter informed Respondent that the Division required Respondent to submit documentation of the correction of the violations by June 24, 2022. (Aff. H. Mott ¶ 27, Ex. 6)

24. Respondent did not submit documentation to the Division by June 24, 2022, documenting correction of the violations observed during the October 26, 2021 inspection. (Aff. H. Mott ¶ 28)

25. On October 20, 2023, the Division issued an Order and Assessment UST23-0038 (“Order”) against Respondent. (Aff. of S. Ward ¶ 2, Ex. 10)

26. The Order’s total civil penalty equals \$46,800.00. (Aff. of E. Ralph ¶ 3)

27. The Order’s civil penalty amounts were assessed according to the facts of the October 26, 2021 inspection and Respondent’s failure to submit required compliance documentation in accordance with TDEC policy and guidance. (Aff. of E. Ralph ¶ 4-6)

CONCLUSIONS OF LAW

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” TENN. R. CIV. P. 56.04; *Rye v. Women’s Care Ctr. of Memphis*, 477 S.W.3d 235, 250-52, 264-65 (Tenn. 2015).

The party seeking summary judgment has the burden of persuading the court that its motion satisfies the requirements of Rule 56. *Rye*, 477 S.W.3d at 250-52, 264-65. Further, when considering a summary judgment motion, the court must view the evidence in the light most

favorable to the nonmoving party and must draw all reasonable inferences in that party's favor. *Huggins v. McKee*, 500 S.W.3d 360, 364 (Tenn. Ct. App. 2016). A motion for summary judgment must be supported by admissible evidence. TENN. R. CIV. P. 56.06.

Courts consistently have emphasized that a party opposing a motion for summary judgment may not simply rest on its pleadings but must affirmatively oppose the motion. *Holland v. City of Memphis*, 125 S.W.3d 425, 428 (Tenn. Ct. App. 2003). See, e.g., *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 89 (Tenn. 2000); *McCarley v. W. Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998). Such opposition may be made by pointing to the evidence in the record which indicates disputed material facts. *McCarley*, 960 S.W.2d at 588.

Summary judgment should therefore be granted only if the uncontroverted facts presented, and conclusions to be drawn from the facts, make it so clear that a reasonable person can reach only one conclusion. *Yount v. FedEx Express*, 2016 WL 1056958, at *3 (Tenn. Ct. App. March 17, 2016).

The Petroleum Underground Storage Tank Act makes it unlawful to construct, alter, or operate a petroleum underground storage tank in violation of the Act or the rules or regulations established under the Act.¹ Responsible parties for violations of the Act include owners or operators of underground storage tank ("UST") systems.²

Rules governing USTs have been promulgated and are effective as Tenn. Comp. R. & Regs. 0400-18-01-.01 to -.17.³ These Rules are enforceable standards dictating how UST systems must be operated and maintained. These standards include various requirements, including the following:

- Keeping spill buckets free of liquid.⁴

¹ Tenn. Code Ann. § 68-215-104(2).

² Tenn. Code Ann. § 68-215-103.

³ Tenn. Code Ann. § 68-215-107(f).

⁴ Tenn. Comp. R. & Regs. 0400-18-01-.02(3)(b)3.

- Keeping a log of monthly spill bucket inspections.⁵
- Testing the impressed current system every three years.⁶
- Inspecting the impressed current rectifier every 60 days.⁷
- Calibrating dispenser meters annually.⁸
- Conducting quarterly dispenser inspections.⁹
- Conducting release detection monitoring at least monthly on tanks.¹⁰
- Conducting annual line tightness tests.¹¹
- Conducting annual line leak detector tests.¹²
- Training and designating Class A and Class B Operators.¹³
- Conducting spill bucket integrity tests.¹⁴
- Conducting overfill prevention tests.¹⁵
- Cooperating with the Division by providing documents, testing, or monitoring records to the Division.¹⁶

The Division is authorized to assess civil penalties and damages against any person who violates or fails to comply with the Act.¹⁷

It is **CONCLUDED** that, considering the totality of the evidence, the Department has demonstrated that the facts relevant to this case are undisputed and that it is entitled to summary judgment.

Upon review of the pleadings and arguments of the parties, it is determined Petitioner's motion is well taken and is hereby **GRANTED**. Accordingly, Respondent's Petition for Appeal of the Commissioner's Order and Assessment is hereby **DISMISSED**.

⁵ Tenn. Comp. R. & Regs. 0400-18-01-.02(3)(b)4.

⁶ Tenn. Comp. R. & Regs. 0400-18-01-.02(4)(c)2.(i).

⁷ Tenn. Comp. R. & Regs. 0400-18-01-.02(4)(c)4.

⁸ Tenn. Comp. R. & Regs. 0400-18-01-.04(1)(a)1.

⁹ Tenn. Comp. R. & Regs. 0400-18-01-.04(1)(e).

¹⁰ Tenn. Comp. R. & Regs. 0400-18-01-.04(2)(a).

¹¹ Tenn. Comp. R. & Regs. 0400-18-01-.04(2)(b)1.(ii).

¹² Tenn. Comp. R. & Regs. 0400-18-01-.04(4)(a).

¹³ Tenn. Comp. R. & Regs. 0400-18-01-.16(1)(a).

¹⁴ Tenn. Comp. R. & Regs. 0400-18-01-.02(3)(c)1.

¹⁵ Tenn. Comp. R. & Regs. 0400-18-01-.02(3)(c)2.


¹⁶ Tenn. Comp. R. & Regs. 0400-18-01-.03(2).

¹⁷ Tenn. Code Ann. § 68-215-121.

It is therefore **ORDERED** that the remedy for the violations of the Act and accompanying regulations is the civil penalty assessed in the Director's Order and Assessment issued on October 20, 2023, and the related orders for correction.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **31st day of July, 2024**.



J. SHANNON BARNHILL
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **31st day of July, 2024**.

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE TENNESSEE BOARD OF UNDERGROUND STORAGE TANKS AND SOLID WASTE DISPOSAL CONTROL (the Board)**, called an Initial Order, was entered on **July 31, 2024**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **August 15, 2024**. A new 30 day period for the filing of an appeal to the Board (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of the document.¹

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied you may file an appeal, which must be **received** by APD no later than 30 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order and/or Other Earlier Orders:** You may appeal the decision, together with any earlier order issued by the Administrative Judge you specifically choose to appeal, to the Board, by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number and state that you want to appeal the decision to the Board, specifying any earlier order(s) issued by the Administrative Judge that you also want to appeal, along with the specific reasons for your appeal. APD must **receive** your written Appeal no later than 30 days after the entry of the Initial Order, which is no later than **August 30, 2024**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The Board Decides to Review the Initial Order:** In addition, the Board may give written notice of its intent to review the Initial Order within the longer of 30 days or 7 days after the first board meeting to occur after entry of the Initial Order. No later than 7 days after the entry of an Initial Order, TDEC shall file, and serve, a Notice of Filing containing the date of the next Board meeting. No later than 7 days after the next Board Meeting, TDEC shall file, and serve, a Notice of Filing setting forth what action, if any, the Board took with respect to the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the Board renders a Final Order affirming, modifying, remanding, or vacating the administrative judge's Initial Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

¹ See TENN. CODE ANN. §§ 68-201-108 (Air Pollution Control Board); 68-211-113, 68-212-113, 68-212-215, 68-215-115, 68-215-119 (Underground Storage Tanks and Solid Waste Disposal Control Board); TENN. CODE ANN. §§ 60-1-401, 69-3-110, 68-221-714 (Board of Water Quality, Oil & Gas).

NOTICE OF APPEAL PROCEDURES

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be **received** by APD within 7 days of the date of entry of the Initial Order, which is no later than **August 7, 2024**. See TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. See TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of the date the Initial Order becomes a Final Order. See TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.filings@tnsos.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
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