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May 21, 2024

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**RE: TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION V.
DHANANJOY KUMAR AND MOHAMMAD MAFIZUL ISLAM AND SANJAY
ROY, APD Case No. 04.44-235341J**

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 UNDERGROUND STORAGE TANKS &
SOLID WASTE DISPOSAL CONTROL BOARD**

IN THE MATTER OF:

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

v.

**DHANANJOY KUMAR,
MOHAMMAD MAFIZUL ISLAM,
and SANJAY ROY,
*Respondents.***

APD Case No. 04.44-235341J

**INITIAL ORDER GRANTING TDEC'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Tennessee Code Annotated sections 68-215-119(b), 4-5-301(a)(2), and 4-5-314(b), this contested case is pending before Administrative Judge Steve Darnell, assigned by the Tennessee Secretary of State's Administrative Procedures Division (APD) to sit alone for the Underground Storage Tanks and Solid Waste Disposal Control Board (Board). The Tennessee Department of Environment and Conservation (TDEC or the Department) is the Petitioner. Dhananjay Kumar, Mohammad Mafizul Islam, and Sanjay Roy are the Respondents.

Pending before the undersigned administrative judge is TDEC's MOTION FOR SUMMARY JUDGMENT. The MOTION FOR SUMMARY JUDGMENT, with related filings, was filed with APD on March 11, 2024.¹

Based upon a review of the Record and the written argument, it is determined that there are no material facts in dispute and that TDEC is entitled to summary judgment as a matter of law. Accordingly, TDEC's MOTION FOR SUMMARY JUDGMENT is **GRANTED**.

¹ Respondents did not file a written response to TDEC's Motion for Summary Judgment.

FINDINGS OF UNDISPUTED MATERIAL FACTS²

1. Dhananjoy Kumar, Mohammad Mafizul Islam, and Sanjay Roy (Respondents) currently own the gas station located at 4775 Horn Lake Road, Memphis, Tennessee 38109 (the Facility).
2. Respondents owned the Facility on April 14, 2022, the date of the relevant inspection.
3. Respondents are the current owners of the Underground Storage Tank (UST) systems located at the Facility and were the owners of the UST systems located at the Facility on April 14, 2022.
4. The Facility has three UST systems: Tank 5A, Tank 6A, and Tank 7A.
5. Tennessee Division of Underground Storage Tanks (Division) personnel conducted a UST Operation Inspection at Respondents' Facility on April 14, 2022.
6. One of the inspection's purposes was to ensure compliance with the Tennessee Petroleum Underground Storage Tank Act (the Act) and implementing rules.
7. During the April 14, 2022 inspection, the inspector examined portions of the three UST systems at the Facility and on-site documentation related to the UST systems.
8. At the time of the inspection, the Facility had not designated an A and B operator with the Division.
9. At the time of the inspection, the console operability test showed that the Automatic Tank Gauging (ATG) probe for Tank 6A was not functioning, resulting in a failed console operability test for that tank.
10. At the time of inspection, there was only one line leak detector test, dated April 1, 2022, available for review.

² Respondents did not deny any of TDEC's proposed Undisputed Material Facts.

11. At the time of inspection, the overflow operability test dated April 1, 2022, had failing results for all tanks at the Facility.

12. At the time of the inspection, the submersible turbine pumps (STP) containment sumps for Tanks 5A, 6A, and 7A were all filled with water.

13. At the time of the inspection, monthly ATG test results for Tank 6A were not available for review.

14. On May 11, 2022, the Division sent a Results of Compliance Inspection Action Required letter to the Respondents. In the letter, the Division cited violations observed during the inspection and informed the Respondents that the Division required them to submit documentation by June 10, 2022, to document correction of the violations.

15. The Division instructed the Respondents to provide the following documentation by June 10, 2022:

- a. Train A/B operator(s) and provide documentation of training to the Memphis Environmental Field Office.
- b. Perform the necessary repairs to the ATG console in accordance with the manufacturer's instructions and submit a revised copy of the ATG Operability Test Report form and the ATG setup report to the Memphis Environmental Field Office.
- c. Submit the last three years of Line Leak Detection tests to the Memphis Environmental Field Office.
- d. Provide documentation showing completion of a current overflow prevention equipment inspection dated after completion of the repair or replacement to the Memphis Environmental Field Office.
- e. Remove the liquid from the sumps and submit documentation to the Memphis Environmental Field Office.

f. Submit monthly ATG reports for the next three consecutive months.

16. The Respondents did not submit documentation to the Division by June 10, 2022, documenting correction of the violations Division personnel observed during the April 14, 2022 inspection.

17. The Division established a second documentation deadline requiring the Respondents to submit documentation of the corrective action by July 13, 2022.

18. The Respondents did not submit documentation to the Division by July 13, 2022, documenting correction of the violations observed during the April 14, 2022 inspection.

19. On May 8, 2023, the Division issued Order and Assessment UST22-0138 (“DIRECTOR’S ORDER AND ASSESSMENT”) against Respondents.

20. The DIRECTOR’S ORDER AND ASSESSMENT’S total civil penalty equals \$17,280.00.

21. On June 21, 2023, the Department received the Respondents’ appeal of the Order and Assessment.

APPLICABLE LAW

TDEC filed a properly supported Motion for Summary Judgment pursuant to Tennessee Rule of Civil Procedure 56. 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), *cert. denied*, 578 U.S. 1003 (2016). The party seeking summary judgment has the burden of persuading the court that its motion satisfies the requirements of Rule 56. *Id.* 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).

When a motion for summary judgment is made and supported as provided in Tennessee Rule 56, to survive summary judgment, the nonmoving party may not rest upon the mere allegations or denials of its pleading, but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, set forth specific facts at the summary judgment stage showing that there is a genuine issue for trial. *Rye*, 477 S.W.3d at 265. For facts to be considered at the summary judgment stage, they must be included in the Record pursuant to Rule 56 and they must be admissible in evidence. *Green v. Green*, 293 S.W.3d 493, 513 (Tenn. 2009).

Summary judgment should 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. *White v. Lawrence*, 975 S.W.2d 525, 529-30 (Tenn. 1998). Summary Judgments are proper in virtually any civil case that can be resolved on legal issues alone. *Eskin v. Bartee*, 262 S.W.3d 727, 732 (Tenn. 2008). Summary judgment is appropriate when the tribunal determines there is no issue of material fact to consider at trial. The goal of summary judgment is to avoid the time and expense of unnecessary trials.

ANALYSIS AND CONCLUSIONS OF LAW

This contested case arises from TDEC's DIRECTOR'S ORDER AND ASSESSMENT issued on May 8, 2023, which assessed the Respondents \$17,280.00 in civil penalties and ordered corrective action. Respondents timely appealed the DIRECTOR'S ORDER AND ASSESSMENT. This contested case was initiated based upon the Respondents' appeal.

The Tennessee 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. *See* Tenn. Code Ann. § 68-215-104(2). "Responsible Parties" for violations of the Act include owners or operators of a petroleum site. *See* Tenn. Code

Ann. § 68-215-103. “Petroleum site” means any site or area where a petroleum underground storage tank is located. Tenn. Code Ann. § 68-215-103(13).

Rules governing USTs have been promulgated and are effective as TENN. COMP. R. & REGS. 0400-18-01-.01 to -.17. *See* Tenn. Code Ann. § 68-215-107(f). These Rules are enforceable standards dictating how UST systems must be operated and maintained. These standards include various requirements, including the following:

- Facilities 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). *See* TENN. COMP. R. & REGS. 0400-18-01-.16(1)(a).
- Owners and/or operators of UST systems must install, calibrate, operate, or maintain release detection method for tank in accordance with manufacturer’s instructions. *See* TENN. COMP. R. & REGS. 0400-18-01-.04(1)(a)2(i).
- Owners and/or operators must use overfill prevention equipment that will automatically shut off flow into the tank when the tank is no more than 95% full to prevent spilling and overflowing associated with petroleum transfer to the UST system. *See* TENN. COMP. R. & REGS. 0400-18-01-.02(3)(a)1(ii)I.
- Owners and/or operators must 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. *See* TENN. COMP. R. & REGS. 0400-18-01-.02(3)(b)3.
- Owners and/or operators of petroleum UST systems must monitor tanks at least monthly for releases using one of the methods listed in rule. *See* TENN. COMP. R. & REGS. 0400-18-01-.04(2)(a).
- Owners, operators, and/or other responsible parties of UST systems must 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. *See* TENN. COMP. R. & REGS. 0400-18-01-.03(2).

Whenever the Commissioner of the Department finds upon investigation that any provisions of the Act are not being carried out, and that effective measures are not being taken to comply with the Act, the Commissioner may issue an order for correction to the responsible party. *See* Tenn. Code Ann. § 68-215-114. The Commissioner also has the authority to assess civil penalties against any violator of the Act or Rules up to \$10,000.00 per day for each day of violation. *See* Tenn. Code Ann. § 68-215-121. In this case, the DIRECTOR’S ORDER AND

ASSESSMENT was issued in compliance with these laws.

Respondents have not denied any of the undisputed facts in this case, including that they owned the UST systems at issue and that the violations found by the Department occurred. The Respondents are Responsible Parties for the violations under the Act as they are the owners of the UST systems at the Facility. As demonstrated by the Record, the Respondents violated Tennessee Code Annotated 68-215-104(2) and six specific rules for which the Division sought civil penalties and corrective action in the DIRECTOR'S ORDER AND ASSESSMENT.

First, the Respondents failed to have designated operators required by state law. At the time of the inspection, the Respondents had not designated an A and B operator with the Division in violation of TENN. COMP. R. & REGS. 0400-18-01-.16(1)(a).

Second, the Respondents failed to install, calibrate, operate, or maintain release detection equipment according to TENN. COMP. R. & REGS. 0400-18-01-.04(1)(a)2(i). At the time of the inspection, the console operability test showed that the ATG probe for Tank 6A was not functioning, resulting in a failed console operability test for that tank.

Third, the Respondents failed to have overfill prevention equipment that automatically shuts off the flow into the tank when the tank is no more than ninety-five (95%) full in violation of TENN. COMP. R. & REGS. 0400-18-01-.02(3)(a)1(ii)I. At the time of inspection, the overfill operability test dated April 1, 2022, had failing results for all tanks at the Facility.

Fourth, the Respondents failed to keep spill catchment basins free of water, dirt, debris, and other substances in violation of TENN. COMP. R. & REGS. 0400-18-01-.02(3)(b)3. The STP containment sumps for Tanks 5A, 6A, and 7A were all filled with water at the time of the inspection.

Fifth, the Respondents failed to monitor tanks at least monthly in violation of TENN. COMP. R. & REGS. 0400-18-01-.04(2)(a). At the time of the inspection, monthly ATG test results for Tank 6A were not available for review.

Sixth, the Respondents failed to cooperate with the Division by failing to provide documents, testing, or monitoring records to the Division in violation of TENN. COMP. R. & REGS. 0400-18-01-.03(2). The Respondents did not provide documentation indicating that the violations had been corrected by June 10, 2022.

It is **CONCLUDED** that the Department has demonstrated that it is entitled to summary judgment as a matter of law. Respondents were subject to the jurisdiction of the Act and its implementing rules because they owned UST systems as defined by the Act at the time relevant to the DIRECTOR'S ORDER AND ASSESSMENT. The Department properly issued the DIRECTOR'S ORDER AND ASSESSMENT against the Respondents for violations of the Act and its implementing rules, requiring corrective action and assessing civil penalties. Respondents failed to offer any evidence demonstrating that there is a genuine issue of material fact as to any of the alleged violations that led to the issuance of the DIRECTOR'S ORDER AND ASSESSMENT. Similarly, Respondents did not present facts or a prevailing legal argument contesting the calculation of the amount of the penalties assessed.

DETERMINATION

Therefore, it is determined there are no genuine issues of material facts and the Department's MOTION FOR SUMMARY JUDGMENT is well taken and hereby **GRANTED**.

Respondents are **ORDERED** to pay the \$17,280.00 in civil penalties assessed in the DIRECTOR'S ORDER AND ASSESSMENT and to perform the corrective actions described in DIRECTOR'S ORDER AND ASSESSMENT that remain outstanding, which consists of the following:

If Tank 6A (Tank 2) will no longer be used, Respondents shall:

(A) submit an amended notification form reflecting a change in status of Tank 6A (also referred to as Tank 2) from currently in use to temporary out of service (TOS), and

(B) submit verification that the tank has been emptied to less than one inch of product.

If Tank 6A (Tank 2) will be used, the Respondents shall:

(A) repair the ATG probe for this tank,

(B) test the probe after repairs are made, and

(C) submit documentation of the repair, retest, and the most recent month of ATG tank leak detector test results to the Division for review.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **21st day of May, 2024**.



STEVE R. DARNELL
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
21st day of May, 2024.

Approved for entry:

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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 **May 21, 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 **June 5, 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 **June 20, 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 **May 28, 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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