



**State of Tennessee
Department of State**

Administrative Procedures Division
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February 22, 2024

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**RE: TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION V.
LANE COLLEGE, APD Case No. 04.44-232534J**

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

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

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

IN THE MATTER OF:)	DIVISION OF UNDERGROUND STORAGE TANKS
)	
DEPARTMENT OF ENVIRONMENT AND CONSERVATION,)	CASE NUMBER UST22-0014
<i>Petitioner,</i>)	
)	
v.)	
)	
LANE COLLEGE,)	DOCKET NUMBER 04.44-232534J
<i>Respondent.</i>)	

~~**PROPOSED**~~ **INITIAL ORDER GRANTING PETITIONER’S MOTION FOR
SUMMARY JUDGMENT**

On February 6, the Petitioner filed a Motion for Summary Judgment in this matter. No response or opposition to the motion was timely filed or served by the Respondent as required by Rule 1360-04-01-.09(3) of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies and the Court’s pre-hearing orders. Upon consideration of the Petitioner’s motion and supporting documents, the Respondent’s failure to timely respond, the record as a whole, and all applicable law, the Court finds that, in accordance with Rule 56 of the Tennessee Rules of Civil Procedure, there are no genuine issues as to any material facts presented in this matter and therefore the Petitioner’s Motion for Summary Judgment should be **GRANTED**.

FINDINGS OF FACT

1. The Tennessee Petroleum Underground Storage Tank Act, Tenn. Code Ann. §§ 68-215-101 to -124 (the “Act”), represents a comprehensive program for the safe storage of petroleum products, the prevention of future underground storage tank (UST) releases, and

the remediation of UST contamination in Tennessee. It grants the Petitioner authority to exercise general supervision over USTs throughout the state.

2. The Act sets minimum requirements for USTs: they must (1) prevent releases due to structural failure for the operational life of the tank, (2) be protected against corrosion, and (3) be constructed and lined with compatible material.
3. The Respondent is a “person” and an “owner” as defined by the Act because it owns the three UST systems located at 369 Lane Avenue, Jackson, Tennessee 38301. (“Facility”)
4. On August 17, 2021, personnel from the Petitioner’s Division of Underground Storage Tanks (“Division”) performed a compliance inspection at the Facility, during which the inspector discovered several violations.
5. The Division subsequently sent three separate letters to the Respondent explaining the violations and how to bring the Facility back into compliance
6. On December 14, 2021, the Division issued a Notice of Violation (NOV) to the Respondent for its failure to comply with the requirements outlined in the previous letters. The NOV provided a deadline for the Respondent to submit documentation to the Division evidencing correction of the violations at the Facility, however, the Respondent failed to comply.
7. On January 11, 2023, the Division issued Director’s Order and Assessment UST22-0014 (“Order”) to the Respondent for its violations of the Act and implementing rules.
8. The Order required the Respondent to perform corrective actions, including: (1) registering to attend UST Operator Training; (2) submitting documentation of release detection records or submitting documentation of the removal of the liquid and/or residue in all tank systems to less than one inch and a notification form updating the status of all tank systems;

(3) submitting documentation of current cathodic protection test results; (4) submitting documentation of the implementation of the impressed current cathodic protection system 60-day record of rectifier operation log; (5) submitting documentation of an investigation and repair of the impressed current corrosion protection system to ensure the rectifier is operational and operating in the proper operating range; (6) contacting the Division's Notification section to determine the total of outstanding annual UST fees, interest, and late penalties and submit payment.

9. The Order assessed the Respondent a total civil penalty of \$16,800.00.
10. The Respondent was served with the Order on February 7, 2023.

CONCLUSIONS OF LAW

This Court has jurisdiction over this action in accordance with section 68-215-119 of the Act. It is a violation of the Act for any UST owner to fail to comply with the requirements of the Act or any promulgated rules. The Underground Storage Tanks and Solid Waste Disposal Board ("Board") has promulgated rules governing the operation of public water systems, Tenn. Comp. R. & Regs. Chapter 0400-18-01 ("Rules"). Tank owners with metal UST systems are required to maintain continuous corrosion protection that complies with the Rules. Tenn. Comp. R. & Regs. 0400-18-01-.02(4)(c). The Act grants the Petitioner authority to exercise general supervision over the placement and storage of petroleum substances in petroleum USTs, release prevention and detection, release correction, closure, and, where applicable, post-closure care of tanks throughout the state. Tenn. Code Ann. § 68-215-107. The Petitioner's supervision extends to the standards for permissible petroleum underground storage tanks, release prevention requirements, and release detection requirements which do or may affect the public health, safety or quality of the environment and which do or may affect the proper storage of petroleum substances. *Id.*

Whenever the Commissioner of the Petitioner 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. Tenn. Code Ann. § 68-215-114. The Commissioner has authority to assess civil penalties against any person who violates or fails to comply with the Act or Rules up to \$10,000.00 per day for each day of violation. Tenn. Code Ann. §§ 68-215-114 and -121. The Commissioner also has authority to assess damages incurred by the Petitioner resulting from the violation. Tenn. Code Ann. § 68-215-121. Stanley R. Boyd is the duly appointed Director of the Division. Pursuant to the Act’s authority, the Commissioner has authorized the Director of the Division as his representative, delegating to him the powers, duties, and responsibilities of the Commissioner to administer and enforce the Act. Tenn. Code Ann. § 68-215-103(2).

ORDER

Upon review of the pleadings, it is determined there are no genuine issues of material facts and therefore, for good cause shown, the Petitioner’s Motion for Summary Judgment is well taken and hereby **GRANTED**. Accordingly, the Notice of Hearing filed on May 9, 2023, which contains Respondent’s Petition for Review/Notice of Appeal is **DISMISSED** with prejudice. The trial scheduled for March 5-6, 2024, is hereby **CANCELLED** and shall be removed from the docket.

REASON FOR DECISION

Considering the totality of the evidence, the Petitioner has demonstrated that it is entitled to judgment as a matter of law. Director’s Order and Assessment UST22-0014 complies with all requirements of the Act, and the Respondent was subject to the jurisdiction of the Act and Rules because it owned the subject UST systems at all times relevant to this matter. The Petitioner

properly issued the Order against the Respondent for violations of the Act and its implementing rules, requiring corrective action and assessing civil penalties.

IT IS SO ORDERED.

This Initial Order entered and effective on this the ^{22nd} day of February, 2024.



JUDGE D. KIM SUMMERS
Administrative Judge
Administrative Procedures Division
Office of the Secretary of State

Respectfully submitted this the 20th day of February, 2024.

/s/ Samantha Buller-Young
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Proposed Initial Order Granting Petitioner’s Motion for Summary Judgment has been sent by email on this 20th day of February, 2024, to the following:

Nathan B. Pride
Highland Law Office
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(731) 422-6895
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Attorney for Lane College

/s/ Samantha Buller-Young
Samantha Buller-Young
Assistant Counsel

TN SOS-APD Tue, Feb 20, 2024 04:25 PM : 6 of 6 pages received

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 **February 22, 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 **March 8, 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 **March 25, 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 **February 29, 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@tn.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
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 6th Floor
Nashville, TN 37243-1102