

**State of Tennessee
Department of Environment and Conservation**

In the Matter of: Department of Environment and Conservation <i>Petitioner,</i> v. BFI Waste Services, LLC, and Browning-Ferris Industries of Tennessee, Inc., <i>Respondents.</i>	Division of Underground Storage Tanks TDEC Case No. FDA23-0027
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Settlement Agreement and Order

On September 6, 2023, the Division of Underground Storage Tanks (“Division”) issued Order and Assessment number FDA23-0027 (“Order”) to BFI Waste Services, LLC and Browning-Ferris Industries of Tennessee, Inc. (“Respondents”). Respondents filed a timely appeal on October 11, 2023. Respondents have satisfactorily addressed all violations contained in the Order. Under sections 4-5-105 and 68-215-119(b) of Tennessee Code Annotated, the Division and Respondents reached a settlement. To implement this settlement, (1) the Division Director agrees and by entering into this Settlement Agreement and Order does dismiss the Order and (2) Respondents agree and by entering into this Settlement Agreement and Order do waive their right to a contested case hearing before the Underground Storage Tanks and Solid Waste Disposal Control Board and withdraws their appeal of the Order. This Settlement Agreement and Order resolves and supersedes the Order. The Division alleges as follows:

Parties

I.

David W. Salyers, P.E., is the duly appointed Commissioner of the Department of Environment and Conservation (“Department”), and among other duties and responsibilities, he is charged with the responsibility for administering and enforcing the Tennessee Petroleum Underground Storage Tank Act (“Act”), Tenn. Code Ann. §§ 68-215-101 to -129. Stanley R. Boyd is the duly appointed Division Director. He has written delegation from the Commissioner to administer and enforce aspects of the Act.

II.

BFI Waste Services, LLC (“BFI Waste Services”) is a limited liability company created in Delaware and is registered to conduct business in Tennessee. Respondent BFI Waste Services is the registered owner of two underground storage tank (“UST”) systems located at 1018 East 38th Street, Chattanooga, Tennessee 37407.

Browning-Ferris Industries of Tennessee, Inc. (“Browning-Ferris Industries,” formerly Chattanooga Disposal Inc.) is a corporation created in Tennessee and is registered to conduct business in Tennessee. Respondent Browning-Ferris Industries’ is the property owner of the site that contains two UST systems located at 1018 East 38th Street, Chattanooga, Tennessee 37407.

Jurisdiction

III.

The Commissioner may issue an order for correction to the responsible party when the Commissioner 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 order shall be complied with within the time limit specified in the order. Tenn. Code Ann. § 68-215-114.

Further, the Commissioner is authorized to assess civil penalties and damages against any person who violates or fails to comply with the Act. Tenn. Code Ann. § 68-215-121. The Commissioner of the Department delegated such authority to Stanley R. Boyd, Director of the Division.

IV.

Respondents are “persons.” Tenn. Code Ann. § 68-215-103(11).

Facts

V.

On December 14, 2010, the Division received a Notification for Underground Storage Tanks form listing Respondent BFI Waste Services as the owner of the two UST systems located at 1018 East 38th Street, Chattanooga, Tennessee 37407. The facility ID number is 3-330069.

VI.

On January 19, 2023, Division personnel sent a Confirmation of Compliance Inspection Appointment letter to Respondent BFI Waste Services. The letter confirmed the Division set up an inspection appointment for January 30, 2023 by phone call on January 18, 2023.

VII.

On January 30, 2023, Division personnel performed a compliance inspection at the facility and discovered the following violations:

- Violation #1: Failure to use spill prevention equipment that will prevent a release of petroleum into the environment when the transfer hose is detached is a violation of Rule 0400-18-01-.02(3)(a)1.(i). Specifically, at the time of the inspection, the spill buckets for Tank 1A and 2A failed integrity testing on January 24, 2023.
- Violation #2: Failure to install or provide adequate overfill prevention equipment is a violation of Rule 0400-18-01-.02(3)(a)1.(ii). Specifically, at the time of the inspection,

overfill inspections for the overfill deceives associated with Tank 1A and 2A failed inspection on January 24, 2023.

Violation #3: Failure to install, calibrate, operate, or maintain release detection method for tank in accordance with manufacturer's instructions of Rule 0400-18-01-.04(1)(a)2. Specifically, at the time of the inspection, the Automatic Tank Gauge (“ATG”) at the facility showed a probe out alarm for Tank 2A. This alarm indicates the probe is not functioning properly and may need repair. Additionally, it was discovered at the inspection the facility was running static testing for the tank systems. However, they were dispensing product 24 hours a day which does not allow enough quiet time for the testing method to perform a valid test.

Violation #4: Failure to monitor tanks at least monthly for releases is a violation of Rule 0400-18-01-.04(2)(a). Specifically, at the time of the inspection, monthly release detection records were not available for April and June of 2022 for Tank 1A and 2A.

Violation #5: Failure to maintain results of annual testing of electronic and mechanical components for three years is a violation of Rule 0400-18-01-.04(5)(b)2. Specifically, at the time of the inspection, Annual ATG operability testing results from 2021 and 2022 were not available for review.

Violation #6: Failure to conduct release investigation activities is a violation of Rule 0400-18-01-.05(3)(a). Specifically, at the time of the inspection, Tank 1A had failing ATG results for several dates in February and May 2022 and Tank 2A had failing ATG results for several dates in February, March, and May 2022.

Violation #7: Failure to perform a monthly walkthrough inspections is a violation of Rule 0400-18-01-.02(8)(a)1.(i). Specifically, at the time of the inspection, monthly walkthrough forms were not provided for February through December of 2022.

Violation #8: Failure to properly perform visual inspections (performed quarterly) for seeps and drips under all dispensers is a violation of rule 0400-18-01-.04(1)(e). Specifically, at the time of the inspection, quarterly dispenser checks were not provided for review.

Violation #9: Failure to report a suspected release within 72 hours in accordance with Rule 0400-18-01-.05(1)(a). Specifically, at the time of the inspection, the suspected releases involving the failed ATG release detection results for Tank 1A or 2A were not reported to the Division.

On this day, Respondent BFI Waste Services began monthly walkthrough inspections, and completed their first quarterly dispenser inspection in the past twelve months. Beginning these activities at the inspection confirmed violation #7 and #8 had been addressed.

Additionally, at the time of the inspection, Division staff witnessed and documented an overfill of Tank #2A. This overfill event is considered a release and required further investigation.

VIII.

On February 6, 2023, Division personnel issued the Results of Compliance Inspection – Fund Reimbursement – Action Required letter to the Respondent BFI Waste Services. The letter cited the violations discovered at the time of the inspection and required Respondent BFI Waste Services to submit documentation addressing the violations by March 8, 2023.

Additionally, on this day, the Division issued a Release Investigation – System Test letter to Respondent BFI Waste Services. The letter required system testing for Tank 1A and 2A be completed and the results submitted by February 16, 2023, if they were failing and March 8, 2023, if they were passing.

IX.

On February 16, 2023 the Division received passing system testing for both Tank 1A and 2A. The documentation confirmed violation #6 had been addressed.

X.

On March 14, 2023, Division personnel issued a Closure of Suspected Release letter to Respondent BFI Waste Services. The letter stated the suspected release case was closed.

XI.

On April 13, 2023, the Division received an Application for Fund Eligibility from Respondent BFI Waste Services for the January 30, 2023 release at the facility.

XII.

Division personnel reviewed the Application for Fund Eligibility along with the documentation required by Rule 0400-18-01-.09. Based upon this review, Division personnel determined that this facility did not meet the requirements for the minimum deductible for the release due to the following:

- Failure to report a suspected release within 72 hours in accordance with Rule 0400-18-01-.05(1)(a).
- Failure to install, calibrate, operate, or maintain release detection method for tank in accordance with manufacturer's instructions of Rule 0400-18-01-.04(1)(a)2.

- Failure to use spill prevention equipment that will prevent a release of petroleum into the environment when the transfer hose is detached is a violation of Rule 0400-18-01-.02(3)(a)1.(i).
- Failure to install or provide adequate overfill prevention equipment is a violation of Rule 0400-18-01-.02(3)(a)1.(ii).
- Failure to perform a monthly walkthrough inspections is a violation of Rule 0400-18-01-.02(8)(a)1.(i).

XIII.

On September 6, 2023, the Division issued the Order requiring Respondents to perform all actions necessary to correct outstanding violations and to bring the facility into full compliance with regulatory requirements. The Order also required Respondents to attend and complete Underground Storage Tank training. Respondents received the Order on September 13, 2023. By October 16, 2023, all the Order's violations had been satisfactorily addressed by Respondents.

Settlement Agreement and Order

XIV.

To resolve this matter and under the authority vested by the Act and the Commissioner's delegation, the Director and Respondents agree to the following:

1. Respondent BFI Waste Services, LLC is assessed an upfront civil penalty in the amount of **\$13,600.00** due immediately after the effective date of this Settlement Agreement and Order.
2. Respondent BFI Waste Services, LLC is assessed the costs of personally serving the Order in the amount of **\$90.00** due immediately after the effective date of this Settlement Agreement and Order.

3. A contingent civil penalty in the amount of \$ 13,600 will be due if Respondent BFI Waste Services, LLC has any operator retraining violations during the twelve calendar months following the effective date of this Settlement Agreement and Order or if Respondent BFI Waste Services, LLC fails to pay the upfront civil penalty within 30 days of the effective date of this Settlement Agreement and Order.
4. Payment shall be made to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 10th Floor Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243.
5. Based on the information provided on the Application for Fund Eligibility and the most recent inspection, the deductible for the release is \$30,000.00.

XV.

The Parties agree the foregoing Settlement Agreement and Order is a fair and reasonable resolution of this case.

Department's Reservation of Rights

In entering this Settlement Agreement and 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, and/or damages incurred by the State against Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/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).

Respondents' Reservation of Rights

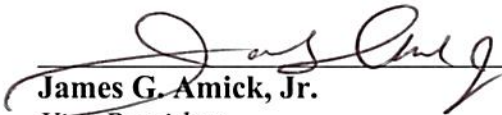
Respondents do not admit or deny the factual allegations, or the alleged violations of law contained in this Settlement Agreement and Order. Respondents reserve their rights to contest the factual allegations and alleged violations contained in this Settlement Agreement and Order in any proceeding other than a proceeding brought by the Department to enforce the terms of this Settlement Agreement and Order.

This Settlement Agreement and Order shall be effective upon being signed on behalf of all parties.



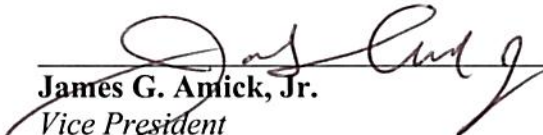
Stanley R. Boyd
Director of Division of Underground Storage Tanks
Tennessee Department of Environment and Conservation

Date: 12/11/2023



James G. Amick, Jr.
Vice President
BFI Waste Services, LLC

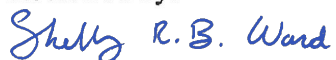
Date: 12/5/2023



James G. Amick, Jr.
Vice President
Browning-Ferris Industries of Tennessee, Inc.

Date: 12/5/2023

Reviewed by:

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