



**STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION
OFFICE OF ADJUDICATIONS**

IN THE MATTER OF : **UNDERGROUND STORAGE
TANK ENFORCEMENT - SITE ID
#151-12935**

**TOP RACK GAS & GROCERY,
LLC** : **DECEMBER 10, 2024**

FINAL DECISION

I. INTRODUCTION

The present matter concerns the Department of Energy and Environmental Protection’s (“Department” or “DEEP staff”) placement of disabling devices – referred to as “red tags” – on the underground storage tank systems (“USTs”) owned or operated by the Respondent, Tahir Khan following an inspection on December 4, 2024, at which Department staff identified various violations of Connecticut law governing the operation of UST systems. Following my review of the evidence in the record, I conclude that probable cause exists to support and sustain the enforcement action taken by the Department. Specifically, the Respondent’s UST systems are in operation beyond the end of their life expectancy, and such violations remain ongoing.

II. JURISDICTION

Subdivision (2) of General Statutes § 22a-449(g) provides:

“Not later than two business days after placing a notice or disabling device on a nonresidential underground storage tank system pursuant to subdivision (1) of this subsection, the commissioner shall provide the owner or operator of the affected underground storage tank system with an opportunity for a hearing. Any such hearing shall be limited to whether the violation upon which the commissioner took action under subdivision (1) of this subsection occurred and whether such violation is continuing.”

Accordingly, the underlying proceeding and this Final Decision are limited by statute to resolving only whether:

1. The violations precipitating action by the Department occurred, and
2. Whether those violations are continuing.



III. PROCEDURAL BACKGROUND

The hearing in this matter was initiated on December 6, 2024, and continued on December 9, 2024, ¹ via the Zoom teleconferencing platform.² The following persons were present: Attorney Sarah Solarz, Lori Saliby, Gary Trombly, Mark Latham, Phil Wilde, Bruno Lopez and Bakul Shah for the Department of Energy and Environmental Protection and Tahir Khan (“Owner/Operator”) and Ken Coomes on behalf of the Respondent, Top Rock Gas & Grocery LLC, (Site ID #151-12935). The parties in this matter are DEEP staff and the Respondent, Mr. Tahir Khan (“the parties”). The Department offered nine proposed exhibits: documentation of the DEEP inspection report, Warning Letter, and Notice of Disabled UST Systems (Exhibits DEEP-1 - DEEP-3); Facility Summary, Weekly Reconciliation, and Inventory Reports (Exhibits DEEP 4-6), the Commissioner of DEEP’s June 22, 2016, approval of Alternate Life Expectancy (“ALE”) for Certain Underground Storage Tanks documentation (Exhibit DEEP-7); Notice of Alternate Life Expectancy for Underground Storage Tanks (Exhibit DEEP-8) and the Pre-Filed Testimony of Lori Saliby (Exhibit DEEP-9). The Respondent offered three proposed exhibits regarding inventory records (Exhibits RES-1 - RES-3). By stipulation among the parties, these documents were all admitted into evidence. DEEP proposed three expert witnesses, Lori Saliby, Bruno Lopez, and Bakul Shah, and all were accepted as Expert Witnesses without objection. Mr. Khan testified as a fact witness on his own behalf without objection from DEEP staff.

IV. FINDINGS OF FACT

1. On December 4, 2024, Department staff disabled (“red tagged”) the USTs and associated dispensers at the Respondent’s facility at 1439 Baldwin Street, Waterbury, Connecticut 06706. Exs. DEEP-1, 3. The Notice of Disabled UST Systems included notice of the date and time of the hearing. Ex. DEEP-3. Department staff red tagged the UST system components due to their not being permanently closed, through removal or proper in-place abandonment, prior to the last day of their 30-year life expectancy and significant operational compliance violations resulting in the issuance of a Notice of Violation,³ which included failure to perform a line leak test every six months for piping with an extended life expectancy and inventory volume measurements for inputs, withdrawals, and amounts were not recorded each operating day and reconciled weekly as required. Exs. DEEP-1-6, 9.
2. Pursuant to the Commissioner’s June 22, 2016 “Alternate Life Expectancy for Certain Underground Storage Tanks” document, certain USTs may remain in service an additional 10 years beyond the default 30-year life expectancy so long as specified conditions and eligibility criteria are met and adhered to. Ex. DEEP-7.
3. The USTs at Site ID #151-12935 consist of three double-walled composite tanks installed on October 1, 1988. Ex. DEEP-1. The normal 30-year life expectancy for these USTs would have been reached on October 1, 2018. *Id.*

¹ The initial opportunity for a hearing on this matter was provided to the Respondent on December 6, 2024. At the pre-hearing conference on December 6th, the Respondent requested a continuance, which was granted. The hearing was continued for December 9, 2024.

² A recording of this hearing is on file with the Office of Adjudications and serves as the official record of this proceeding. All references herein to testimony are from the hearing held on December 9, 2024, via Zoom.

³ The Notice of Violation was not submitted as a part of the evidentiary record. Ms. Saliby confirmed a Notice of Violation was issued. Test. 12/9/24, Saliby, 31:32.



4. The Respondent submitted a Notice of Alternate Life Expectancy for Underground Storage Tanks (“Notice”) on September 24, 2018. Ex. DEEP-8. The Notice documented that the UST systems were single-walled fiberglass reinforced plastics or composite steel. *Id.*
5. The information submitted in the Notice was inaccurate and incorrectly documented the type of UST systems at the site. Exs. DEEP-1, 8, Test. 12/9/24, Saliby, 14:00, Test. 12/9/24, Kahn, 47:51. If the information submitted is inaccurate, the UST systems do not qualify for the extended life and have a thirty-year life expectancy. Test. 12/9/24, Saliby, 14:28.
6. The Notice contains a certification that “I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that based on reasonable investigation, including my inquiry of the individuals responsible for obtaining the information, the submitted information is true, accurate, and complete to the best of my knowledge and belief.” Ex. DEEP-8. Mr. Kahn signed and submitted the Notice. *Id.*, Test. 12/9/24, Kahn, 44:55.
7. An Owner/Operator’s failure to adhere to any of the conditions, terms, or criteria of Alternate Life Expectancy may result in the life expectancy of a UST reverting to the standard 30-year life expectancy as set forth in R.C.S.A. § 22a-449(d)-111(c). Exs. DEEP-7, 8.
8. Department staff does not approve or otherwise acknowledge the accuracy of ALE notifications when submitted by an owner/operator. *Id.*
9. The Site is not in Significant Operational Compliance. Exs. DEEP 1-3.
10. The owner/operator failed to perform a line leak test every six months for piping with an extended life expectancy. Ex. DEEP-3, Test. 12/9/24, Saliby, 16:00. The last line leak test was performed in May 2024 and needs to be completed more than six months later. Therefore, this violation remains ongoing. Test. 12/9/24, Saliby 31:00, Test. 12/9/24, Kahn 41:00, 48:32.
11. The Site does not have appropriate release detection due to the inventory reconciliation not being properly completed. The inventory records were not signed, and reconciliation was not documented. Exs. DEEP-5, RES-3. To monitor for unsuspected releases, reconciliation is required to determine whether the UST systems had losses or gains within the tolerance levels. Test. 12/9/24, Saliby, 18:48.
12. The Owner/Operator submitted inventory documentation as part of the hearing process. DEEP determined it was insufficient for the same reasons as the paperwork provided during the inspection. Namely, it was unsigned and did not contain the required reconciliation. Test. 12/9/24, Saliby, 27:01. Therefore, this violation remains ongoing.
13. The Respondent’s USTs at Site ID #151-12935 remained in operation beyond their 30-year operation and were not permanently closed through removal or proper in-place abandonment, in violation of R.C.S.A. § 22a-449-110(c). The violation remains ongoing. Exs. DEEP-1-9.

V. CONCLUSION

There was probable cause to support and sustain the enforcement action taken by Department staff on December 4, 2024, regarding the UST system components at Site ID #151-12935. The testimony and documentary evidence provided by the Department demonstrate and confirm that the violations in question occurred and are continuing at this time. The Alternate Life Expectancy was not valid in light of the inaccurate documentation submitted to DEEP, and therefore, the standard 30-year term applies to the UST systems, which was reached on October 1, 2018. Accordingly, the red tagged UST system components have exceeded their life expectancy established by R.C.S.A. § 22a-449(d)-111(c). Furthermore, even if the Alternate Life Expectancy was in place, significant operational compliance violations were discovered through the site investigation, which would result in the reversal of the Alternate Life Expectancy. The



Connecticut
Department of Energy &
Environmental Protection

Notice of Disabled Systems is effective immediately, and the red tags shall remain in place and in effect so long as the violations continue.

A handwritten signature in black ink that reads "Kathleen W. Reiser". The signature is written in a cursive style and is positioned above a horizontal dashed line.

Kathleen W. Reiser, Esq.
Hearing Officer

Dated: December 10, 2024

cc: Service List