



## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

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**Eric J. Holcomb**  
Governor

**Brian C. Rockensuess**  
Commissioner

January 17, 2023

Kroger Limited Partnership I  
c/o Corporation Service Company  
135 N Pennsylvania St., Suite 1610  
Indianapolis, IN 46204

Kroger Limited Partnership I  
Attn: Steve McSorley  
Via email: [steve.mcsorley@kroger.com](mailto:steve.mcsorley@kroger.com)

Re: Violation Letter  
Kroger L-744  
2864 Charlestown Rd  
New Albany, Floyd County  
UST Facility ID # 24703

Dear Mr. McSorley:

An inspector from the Indiana Department of Environmental Management (IDEM), Underground Storage Tank (UST) Section, conducted an inspection of the site referenced above on December 12, 2022.

The inspection was conducted pursuant to Indiana Code (IC) 13-14-2-2 to determine compliance with the provisions of IC 13-23 and 329 IAC 9. In accordance with IC 13-14-5, a summary of the inspection is provided below:

Type of Inspection: Initial

Results of Inspection: Violations were discovered and require a submittal.

Within thirty (30) days of receipt of this letter, documentation demonstrating compliance with each of the requirements listed in the attached Inspection Report and Description of Violations (DOV) must be submitted to IDEM. Failure to submit this documentation may lead to this facility being referred for enforcement.

An enforcement action may include civil penalties of up to \$10,000 per UST. Enforcement actions may also affect the owner's and/or operator's eligibility for reimbursement from the Excess Liability Trust Fund (ELTF). Additionally, IDEM may deem the USTs at this facility ineligible for delivery, deposit or acceptance of regulated substances pursuant to IC 13-23-1-4. Finally, federal and criminal penalties may apply for failure to provide required notification; or submitting false information pursuant to IC 13-23-14-2 and liable under IC 13-30-10.

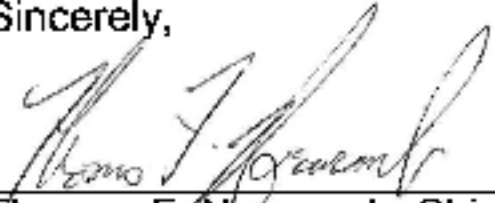
Thank you for your attention to this matter. Please submit the required documents to the UST Section via email at [USTCompliance@idem.in.gov](mailto:USTCompliance@idem.in.gov). Include in the subject line of the response the UST Facility ID # 24703.

Inspector: Brock Goodman  
Phone: (812) 582-9843

Direct any questions regarding the inspection to:

Compliance Manager: Jordan Ware  
Phone: (317) 232-2045

Sincerely,



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Thomas F. Newcomb, Chief  
UST Compliance Section  
Office of Land Quality

cc: Jordan Ware  
Brock Goodman  
UST Facility ID File # 24703

### DESCRIPTION OF VIOLATIONS

This inspection or records review revealed that the owner and/or operator of this facility is in violation of Indiana UST Rule 329 IAC 9. 329 Indiana Administrative Code ("IAC") 9 incorporates certain federal underground storage tank requirements found in 40 Code of Federal Regulations ("CFR") Part 280, including those identified below. The Description of Violations (DOV) and corrective measures are as follows:

**FACILITY NAME:** Kroger L-744

**UST FACILITY ID:** 24703

**ADDRESS:** 2864 Charlestown Road  
New Albany, IN 47150  
Floyd County

**INSPECTION DATE:**  
December 12, 2022

### VIOLATIONS NOTED IN THIS INSPECTION

#### 329 IAC 9-2-2(c) – Failure to register/notify with complete information

Citation:

Pursuant to 329 IAC 9-2-2(c), an owner required to submit a notification under this section shall provide:

- (1) a notification for each UST owned;
- (2) complete information required on the form for each UST owned; and
- (3) if applicable, a separate notification form for each separate place of operation at which the USTs are located.

Violation Details:

*The owner and/or operator of the UST system(s) at this site are in violation of this rule because an updated UST Notification Form 45223 is needed with correct piping and correct overfill prevention.*

Corrective Action:

The owner and/or operator of the UST systems at this site shall fill out and submit to IDEM a correct and complete copy of the appropriate state form with required attachments, within fifteen (15) days of receipt of this notice.

#### 329 IAC 9-8-11(b) – Failure to demonstrate the ability to pay the deductible amount

Citation:

Pursuant to 329 IAC 9-8-11(b), an owner or operator of:

- (1) twelve (12) or fewer USTs shall demonstrate the ability to pay the applicable deductible amount under IC 13-23-9-1.3; or
- (2) more than twelve (12) USTs shall demonstrate the ability to pay two (2) times the applicable deductible amount under IC 13-23-9-1.3.

Violation Details:

*The owner and/or operator of the UST system(s) at this site are in violation of this rule because documentation indicating a current and applicable financial responsibility mechanism was not provided.*

**Corrective Action:**

The owner and/or operator of the UST systems at this site shall submit a copy of the instrument proving they have the coverage required by this rule within thirty (30) days of receipt of this notice.

**§ 280.40(a)(3)(iii) – Failure to perform annual tests of ALLD**

**Citation:**

Pursuant to 40 CFR 280.40(a)(3)(iii), owners and operators of UST systems must provide a method, or combination of methods, of release detection that beginning on October 13, 2018, is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the implementing agency to be no less protective of human health and the environment than the two options listed in paragraphs (a)(1) and (2) of this section. A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

(iii) Automatic line leak detector: test operation to meet criteria in § 280.44(a) by simulating a leak.

**Violation Details:**

*The owner and/or operator of the UST system(s) at this site are in violation of this rule because documentation indicating a current, passing annual line leak detector test for all tanks by a IDHS certified contractor was not provided.*

**Corrective Action:**

The owner and/or operator of the UST systems at this site shall have the automatic line leak detectors tested for proper operation by simulating a leak within thirty (30) days of receipt of this notice and submit the results within forty five (45) days of receipt of this notice.

**§ 280.41(b)(1)(i)(B) – Failure to perform annual piping LTT or monthly monitoring**

**Citation:**

Pursuant to 40 CFR 280.41(b)(1)(i)(B), pressurized underground piping installed on or before April 11, 2016 (previously cited as September 2, 2009 under 329 IAC 9-2-1(2)(D)) that routinely contains regulated substances must have an annual line tightness test conducted in accordance with § 280.44(b) or have monthly monitoring conducted in accordance with § 280.44(c).

**Violation Details:**

*The owner and/or operator of the UST system(s) at this site are in violation of this rule because documentation indicating a current, passing annual line tightness test by a IDHS certified contractor was not provided.*

**Corrective Action:**

The owner and/or operator of the UST systems at this site shall have any piping that contains a regulated amount of product and found to not have had appropriate monthly monitoring or an annual line tightness test within the 12 months prior to inspection tightness tested within thirty (30) days of receipt of this notice and submit the results within forty five (45) days of receipt of this notice.

**§ 280.20(c)(1)(ii) – Failure to have overfill prevention equipment installed or installed properly**

**Citation:**

Pursuant to 40 CFR 280.20(c)(1)(ii), to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(ii) Overfill prevention equipment that will:

(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(C) Restrict flow 30 minutes prior to overfilling, alert the transfer operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

**Violation Details:**

*The owner and/or operator of the UST system(s) at this site are in violation of this rule because during inspection, all USTs were observed to have auto shutoff devices installed. Prior records indicate the presence of ball floats and auto shutoff devices installed as the method of UST overfill prevention. Documentation of either the removal of the ball floats or proper calibration and adjustment of the auto shutoff devices for conjoined use is needed.*

**Corrective Action:**

The owner and/or operator of the UST systems at this site shall, within thirty (30) days of receipt of this notice, contract with a certified contractor to install or replace absent or substandard overfill prevention equipment that will operate as required. The UST owner and/or operator must submit proof that the overfill prevention equipment has been installed properly to the 90% or 95% fill level as required by the type of equipment within forty five (45) days of receipt of this notice. In the case where an owner has changed the overfill prevention equipment from a flow restrictor (ball float) to an auto-shutoff device, the owner must document the entire flow restrictor has been removed or that the automatic shut off device is installed at 90% or lower.

**§ 280.35(a)(1) – Failure to perform periodic testing of spill prevention equipment and containment sumps used for IM**

**Citation:**

Pursuant to 40 CFR 280.35(a)(1), owners and operators of UST systems with spill and overflow prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:  
(1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping must prevent releases to the environment.

**Violation Details:**

*The owner and/or operator of the UST system(s) at this site are in violation of this rule because documentation indicating a current, passing three (3) year spill bucket test for all tanks by a IDHS certified contractor was not provided.*

**Corrective Action:**

The owner and/or operator of the UST systems at this site shall, within thirty (30) days of receipt of this notice, contract with a certified contractor to inspect, repair and test all spill prevention equipment and containment sumps. Documentation, to include photographs, inspection, repair and testing results, showing the spill prevention equipment and containment sumps are liquid tight must be submitted within forty five (45) days of the receipt of this notice.

**§ 280.35(a)(2) – Failure to perform periodic testing of overflow prevention equipment**

**Citation:**

Pursuant to 40 CFR 280.35(a)(2), overflow prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overflow prevention equipment is set to activate at the correct level specified in § 280.20(c) and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the criteria in paragraph (a)(1)(ii)(A) through (C) of this section.

**Violation Details:**

*The owner and/or operator of the UST system(s) at this site are in violation of this rule because documentation indicating a current, passing three (3) year overflow device test by a IDHS certified contractor was not provided.*

**Corrective Action:**

The owner and/or operator of the UST systems at this site shall, within thirty (30) days of receipt of this notice, contract with a certified contractor to inspect, repair and test all overfill prevention equipment. Documentation, to include photographs, inspection, repair, measurements and testing results, showing the overfill prevention equipment is fully functional and set at the correct level must be submitted within forty five (45) days of the receipt of this notice.

**§ 280.40(a)(3)(i) – Failure to perform annual tests of ATG**

**Citation:**

Pursuant to 40 CFR 280.40(a)(3)(i), owners and operators of UST systems must provide a method, or combination of methods, of release detection that beginning on October 13, 2018, is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the implementing agency to be no less protective of human health and the environment than the two options listed in paragraphs (a)(1) and (2) of this section. A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:  
(i) Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup.

**Violation Details:**

*The owner and/or operator of the UST system(s) at this site are in violation of this rule because documentation indicating a current, passing annual ATG functionality test by a IDHS certified contractor was not provided.*

**Corrective Action:**

The owner and/or operator of the UST systems at this site shall have all components of the automatic tank gauge or other controllers tested for proper operation within thirty (30) days of receipt of this notice and submit the results within forty five (45) days of receipt of this notice.

<b>§ 280.40(a)(3)(ii) – Failure to perform annual tests of probes &amp; sensors</b>
<b>Citation:</b> Pursuant to 40 CFR 280.40(a)(3)(ii), owners and operators of UST systems must provide a method, or combination of methods, of release detection that beginning on October 13, 2018, is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the implementing agency to be no less protective of human health and the environment than the two options listed in paragraphs (a)(1) and (2) of this section. A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria: (ii) Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller.
<b>Violation Details:</b> <i>The owner and/or operator of the UST system(s) at this site are in violation of this rule because documentation indicating a current, passing annual ATG probes/sensor test by a IDHS certified contractor was not provided.</i>
<b>Corrective Action:</b> The owner and/or operator of the UST systems at this site shall have all components of the automatic tank gauging probes and sensors tested for proper operation within thirty (30) days of receipt of this notice and submit the results within forty five (45) days of receipt of this notice.

**§ 280.36(a)(2)&(3) – Failure to perform walkthrough inspections in accordance with recognized practice**

**Citation:**

Pursuant to 40 CFR 280.36(a)(2)&(3), conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to paragraph (a)(1) of this section; or conduct operation and maintenance walkthrough inspections developed by the implementing agency that checks equipment comparable to paragraph (a)(1) of this section.

**Violation Details:**

*The owner and/or operator of the UST system(s) at this site are in violation of this rule because during inspection, it was observed that the site is completing monthly walk through inspections but are missing the required release detection equipment (ATG) inspection each month.*

**Corrective Action:**

The owner and/or operator of the UST systems at this site shall, within seven (7) days of receipt of this notice, perform the required walkthrough inspection for all UST systems at the site in accordance with a standard of practice referenced in the rule. Documentation, to include photographs, inspection forms, repair documents, and waste disposal records, showing the walkthrough inspection has been completed must be submitted within forty five (45) days of the receipt of this notice.

**§ 280.36(a)(1)(ii) – Failure to perform annual walkthrough inspections (6/28/2022)**

**Citation:**

Pursuant to 40 CFR 280.36(a)(1)(ii), to properly operate and maintain UST systems, not later than June 28, 2021 owners and operators must conduct a walkthrough inspection annually that, at a minimum, checks containment sumps and hand held release detection equipment.

**Violation Details:**

*The owner and/or operator of the UST system(s) at this site are in violation of this rule because documentation indicating an annual walk through inspection has been accomplished was not provided.*

**Corrective Action:**

The owner and/or operator of the UST systems at this site shall, within seven (7) days of receipt of this notice, perform the annual walkthrough inspection for all UST systems at the site in accordance with a standard of practice referenced in the rule. Documentation, to include photographs, inspection forms, repair documents, and waste disposal records, showing the walkthrough inspection has been completed must be submitted within forty five (45) days of the receipt of this notice.

**§ 280.245 – Failure to maintain list of designated operators and/or training records**

**Citation:**

Pursuant to 40 CFR 280.245, owners and operators of underground storage tank systems must maintain a list of designated Class A, Class B, and Class C operators and maintain records verifying that training and retraining, as applicable, have been completed, in accordance with § 280.34.

**Violation Details:**

*The owner and/or operator of the UST system(s) at this site are in violation of this rule because documentation indicating current class A,B,C operator training was not provided.*

**Corrective Action:**

The owner or operator of the UST systems at this site shall submit a list of those employees designated to be Class A, Class B and Class C operators. Those so designated must be trained and certification of that training submitted within thirty (30) days of receipt of this notice.



**UNDERGROUND STORAGE  
TANK INSPECTION REPORT**

INDIANA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

UST FAC ID: **24703**

Inspector's Name:	Brock Goodman
Date:	December 12, 2022
Time In:	09:48
Time Out:	11:05
Inspection Type:	Initial

**FACILITY NAME / LOCATION**

FACILITY NAME <b>Kroger L-744</b>		FACILITY ADDRESS (number and street) <b>2864 Charlestown Road</b>			
ADDRESS (line 2)	CITY <b>New Albany</b>	STATE <b>IN</b>	ZIP CODE <b>47150</b>	COUNTY <b>Floyd</b>	

**UST OWNER**

UST Owner Name (If in Individual Capacity) <b>Kroger Limited Partnership I</b>					BUSINESS ID (From the Secretary of State) <b>LP97110042</b>
PREFIX <b>Mr.</b>	FIRST NAME <b>Steve</b>	MI	LAST NAME <b>McSorley</b>		SUFFIX
TELEPHONE NUMBER <b>(502) 423-4800</b>		EMAIL ADDRESS <b>steve.mcsorley@kroger.com</b>			

**UST OPERATOR**

UST Operator Name (If in Individual Capacity) <b>Kroger Limited Partnership I</b>					BUSINESS ID (From the Secretary of State) <b>LP97110042</b>
PREFIX <b>Mr.</b>	FIRST NAME <b>Steve</b>	MI	LAST NAME <b>McSorley</b>		SUFFIX
TELEPHONE NUMBER <b>(502) 423-4800</b>		EMAIL ADDRESS <b>steve.mcsorley@kroger.com</b>			

**PROPERTY OWNER**

UST Property Owner Name (If in Individual Capacity) <b>Kroger Limited Partnership I</b>					BUSINESS ID (From the Secretary of State) <b>LP97110042</b>
PREFIX <b>Mr.</b>	FIRST NAME <b>Steve</b>	MI	LAST NAME <b>McSorley</b>		SUFFIX
TELEPHONE NUMBER <b>(502) 423-4800</b>		EMAIL ADDRESS <b>steve.mcsorley@kroger.com</b>			

**COMPLIANCE ELEMENTS**

All USTs properly registered and up-to-date notification form on file	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>	UNK
(1)An updated UST Notification Form 45223 is needed with correct piping and correct overfill prevention						
O/O is in compliance with reporting & record keeping requirements	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>	UNK
O/O is in compliance with release reporting or investigation						
<input type="checkbox"/>	YES	<input type="checkbox"/>	NO	<input checked="" type="checkbox"/>	N/A	UNK
O/O is in compliance with all UST closure requirements						
<input type="checkbox"/>	YES	<input type="checkbox"/>	NO	<input checked="" type="checkbox"/>	N/A	UNK
O/O has met all financial responsibility requirements						
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>	N/A	UNK
(1)A current and applicable financial responsibility mechanism is needed.						
40 CFR 280, Subpart A installation requirements (partially excluded) met	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO	<input checked="" type="checkbox"/>	UNK
40 CFR 280, Subpart B installation and upgrade requirements met						
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>		UNK
(1)Auto shutoff device / Ball float conflict						
40 CFR 280, Subpart C spill/overfill control requirements met	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>	UNK
40 CFR 280, Subpart C compatibility requirements met						
<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>	N/A	UNK
40 CFR 280, Subpart C O&M and testing requirements met						
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>		UNK
Need (1)spill bucket testing (2)overfill device testing (3)Monthly walk through inspections not to standard(4)Annual walk through inspection						
40 CFR 280, Subpart D release detection requirements met	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>	UNK
Need (1)ATG functionality test (2)ATG probes/sensor test (3)line leak detector test (4)line tightness test						
40 CFR 280, Subpart J operator training requirements met	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>	UNK
(1)Current class A,B,C operator training certificates was not provided.						

The information contained on this page is based upon a review of files related to this site and/or observations from an underground storage tank inspector. This page may contain information not specifically related to possible violations found during the review or inspection and is meant to give the owners and/or operator specific information to assist them.

**Site Maintains:**

- One (1) FG DW UST installed in November 2002 (28K split 20K/8K)
- One (1) 20K REG (T1 C1)
- One (1) 8K GSL (T1 C2)
- Piping is Flex DW and pressurized

RD UST = ATG, INT

RD Piping = LLD, LTT, ATG, INT

Overfill/Spill = Spill Buckets + Auto Shutoff (original, current) + BF (original, current) + Alarms (current) + UDC (current)

ATG Certification = N

Overfill Protection Test = N

Spill bucket Test = N

Containment Sumps Test Required = N (If INT is primary piping RD)

**Site History:**

Site is an active service station. There is no prior UST history at this site

**Contact Information**

Steve McSorley, [steve.mcsorley@kroger.com](mailto:steve.mcsorley@kroger.com)

**Documentation not provided at the time of the file review:**

- Updated NF (NF 8/17/15, initial approval 6/3/16 - missing piping material, needs corrected overfill prevention)
- Certificate of Financial Responsibility
- Operator Certificates A, B, C
- UST RD (ATG, INT)
- Piping RD (ATG, INT)
- LLD
- LTT
- ATG/Probe + sensor certification
- Spill Bucket Test
- Overfill Test
- STP/UDC Test (If INT is primary piping RD)
- Monthly Walk through
- Annual Walk through

The information contained on this page is based upon a review of files related to this site and/or observations from an underground storage tank inspector. This page may contain information not specifically related to possible violations found during the review or inspection and is meant to give the owners and/or operator specific information to assist them.

The following are **AREAS OF CONCERN** found during the inspection that will need to be addressed by the owner and/or operator:

A.) During inspection, it was observed that the piping within UDC 1/2 has a small amount of seepage.

The following are **VIOLATIONS** discovered during the inspection that will need to be corrected within 30 days of receipt of this inspection report to avoid further action and achieve compliance with the state underground storage tank program:

1.) During inspection, all USTs were observed to have auto shutoff devices installed. Prior records indicate the presence of ball floats and auto shutoff devices installed as the method of UST overflow prevention. Documentation of either the removal of the ball floats or proper calibration and adjustment of the auto shutoff devices for conjoined use is needed.

The following are **RECORDS** to be submitted to the inspector within 30 days of receipt of this inspection report to avoid further action and achieve compliance with the state underground storage tank program:

2.) An updated UST Notification Form 45223 is needed with correct piping and correct overflow prevention

3.) Documentation indicating a current and applicable financial responsibility mechanism was not provided.

4.) Documentation indicating a current, passing annual line leak detector test for all tanks by a IDHS certified contractor was not provided.

5.) Documentation indicating a current, passing annual line tightness test by a IDHS certified contractor was not provided.

6.) Documentation indicating a current, passing three (3) year spill bucket test for all tanks by a IDHS certified contractor was not provided.

7.) Documentation indicating a current, passing three (3) year overflow device test by a IDHS certified contractor was not provided.

8.) Documentation indicating a current, passing annual ATG functionality test by a IDHS certified contractor was not provided.

The information contained on this page is based upon a review of files related to this site and/or observations from an underground storage tank inspector. This page may contain information not specifically related to possible violations found during the review or inspection and is meant to give the owners and/or operator specific information to assist them.

9.) Documentation indicating a current, passing annual ATG probes/sensor test by a IDHS certified contractor was not provided.

10.) Failure to perform monthly walk through inspections in accordance with recognized practice.

11.) Documentation indicating an annual walk through inspection has been accomplished was not provided.

12.) Documentation indicating current class A,B,C operator training was not provided.

**INSPECTOR NOTES:**

I.) During inspection, it was observed that the piping is single walled black OPW Pisces piping with the blue chase pipe, which is not double walled piping. Interstitial monitoring cannot be primary piping release detection. A line tightness test is needed.

II.) Tank is a 20k compartmentalized tank with 12k being RUL and 8k being PUL.