

**STATE OF TENNESSEE**  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

|                                  |   |   |
|----------------------------------|---|---|
| <b>IN THE MATTER OF:</b>         | ) | <b>DIVISION OF UNDERGROUND</b>              |
|                                  | ) |   |
| <b>MAC’S CONVENIENCE STORES,</b> | ) | <b>STORAGE TANKS</b>                        |
|                                  | ) |   |
| <b>LLC, and R1-TN 1, LLC</b>     | ) | <b>CASE NO. FDA23-0022</b>                  |
|                                  | ) |   |
| <b>RESPONDENTS.</b>              | ) | <b>FACILITY: CIRCLE K STORE NO. 4703615</b> |
|                                  | ) |   |

**ORDER AND ASSESSMENT**

David W. Salyers, P.E., Commissioner of the Department of Environment and Conservation (the “Commissioner”) states:

**PARTIES**

**I.**

David W. Salyers, P.E., is the duly appointed Commissioner of the Department of Environment and Conservation (“Department”) and is charged with 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 Director (“Director”) of the Division of Underground Storage Tanks (“Division”) and has received written delegation from the Commissioner to administer and enforce the Act.

**II.**

Mac’s Convenience Stores, LLC (“Respondent Mac’s”) is a limited liability company created in Delaware and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of four underground storage tank (UST) systems located at 3729 Tennessee Avenue, Chattanooga, Tennessee 37409. Service of process may be made on the Respondent’s Registered Agent, Corporation Service Company, at 2908 Poston Avenue, Nashville, Tennessee 37203.

RI-TN 1, LLC (“Respondent RI-TN”) is a limited liability company created in the state of Delaware and is properly registered to conduct business in Tennessee. The Respondent is the registered property owner of the site that contains four UST systems located at 3729 Tennessee Avenue, Chattanooga, Tennessee 37409. Service of process may be made on the Respondent’s Registered Agent, Corporation Service Company, at 2908 Poston Avenue, Nashville, Tennessee 37203. Respondent Mac’s and Respondent RI-TN 1, will hereinafter collectively be referred to as the “Respondents.”

## **JURISDICTION**

### **III.**

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 Commissioner may issue an Order for correction to the responsible party, and this Order shall be complied with within the time limit specified in the Order. Tenn. Code Ann. § 68-215-114. If this Order becomes final, the Commissioner may affix a notice of petroleum delivery prohibition (“red tag”) to the facility fill ports and/or dispensers and give notice on the Department’s website of petroleum delivery prohibition. Tenn. Code Ann. § 68-215-106(c). Further, the Commissioner is authorized to assess civil penalties against any person who violates or fails to comply with the Act. Tenn. Code Ann. § 68-215-121. Rules governing USTs have been promulgated pursuant to Tenn. Code Ann. § 68-215-107(f) and are effective as Tenn. Comp. R. & Regs. 0400-18-01-.01 to -.17 (“Rules”).

### **IV.**

The Respondents are persons as defined by section 68-215-103(11) of the Act and responsible parties as defined by section 68-215-103(17)(A) of the Act and have violated the Act as hereinafter stated.

## **FACTS**

### **V.**

On November 1, 2017, the Division received a Notification for Underground Storage Tanks form listing Respondent Mac’s as the owner of the four UST systems located at 3729 Tennessee Avenue, Chattanooga, Tennessee 37409.

### **VI.**

On January 5, 2023, Division personnel received an email from Respondent Mac’s representative Mary Ward stating the diesel line did not pass line tightness testing on January 4, 2023. This is considered a suspected release and must be investigated.

### **VII.**

On January 12, 2023, Division personnel performed an inspection at the facility where the following violation was discovered:

Violation #1: Failure to test line leak detectors annually in accordance with Rule 0400-18-01-.04(4)(a). Specifically, at the time of the inspection, annual line leak detector testing was not provided for Tank 4A (4,000 gallon Diesel).

**VIII.**

On January 25, 2023, Division personnel sent a Results of Compliance Inspection Fund Reimbursement – Action Required letter to Respondent Mac’s. The letter cited the violation discovered at the time of the inspection and required Respondent Mac’s to submit documentation to the Division by February 27, 2023.

**IX.**

On January 26, 2023, Division personnel received passing line leak detector and line tightness testing results performed on January 10, 2023, after repair of the diesel line associated with Tank 4A. This documentation verified the violation discovered at the inspection had been corrected.

**X.**

On February 9, 2023, the Division received an Application for Fund Eligibility on behalf of Respondent Mac’s for the January 4, 2023, release at the facility.

**XI.**

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 test line leak detectors annually in accordance with Rule 0400-18-01-.04(4)(a).The deductible for the release is \$10,000.00.

**VIOLATIONS**

**XII.**

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondent violated section 68-215-104(2) of the Act, which states:

It is unlawful to: Construct, alter or operate a petroleum underground storage tank in violation of this chapter or the rules or regulations established pursuant thereto[.]

**XIII.**

By failing to test line leak detectors annually, the Respondent has violated Rule 0400-18-01-.04(4)(a), which states:

0400-18-01-.04 RELEASE DETECTION.

(4) Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of paragraph (2) of this rule shall be conducted in accordance with the following:

(a) Automatic line leak detectors.

Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of petroleum through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with guidance provided by the division.

**ORDER AND ASSESSMENT**

**XIV.**

Pursuant to the authority vested by Tenn. Code Ann. §§ 68-215-107, -114, and -121 of the Act, the Respondents are issued the following Order:

1. The Application for Fund Eligibility for the January 4, 2023 release is approved with a deductible of \$10,000.00.
2. The Respondents shall perform release investigation and remediation activities of Rule 0400-18-01-.06 within the timeframes determined by the Division.
3. If the Respondents fail to comply with this order and/or file an appeal within the timeframes stated below, **the above-referenced facility will be placed on the Delivery Prohibition List and the fill ports and dispensers will be red-tagged until compliance is achieved.** Tenn. Code Ann. § 68-215-106(c).
4. On or before the 90th day after receipt of this Order, Respondent Mac's must either complete operator retraining or attend Underground Storage Tank School provided by the Division. To complete this, the Respondent shall either:
  - a. Complete online (Tennessee Tank Helper) training anytime at your convenience, using this link:  
<https://tdec.tn.gov/tankhelper>
    - If the Respondent does not already have an account, one shall be created and all relevant trainings for the site shall be completed.
  - b. Complete virtual training (Tennessee Tank School) by registering for the upcoming class using this link:

<https://www.tn.gov/environment/program-areas/ust-underground-storage-tanks/operator-training/tank-school.html>

- Tank school classes are held once a month on the second Wednesday of the month. The Respondent shall register to attend the class at least 1 week prior to the class. A post-class test score of 70 or above is required.
5. Failure to comply with any of the requirements of this Order could lead to further enforcement actions which may include civil penalties, assessment of damages and/or recovery of costs.
  6. With the exception of the deadline for filing the appeal of this Order, the Director may extend the compliance dates contained within this Order for a fixed time period for good cause shown by the Respondents. To be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay. The Director will reply to the Respondents' request in writing, establishing a new deadline for compliance with this Order. Should the Respondents fail to meet the requirements of this Order by the new deadline, then any associated civil penalty shall be due within 30 days after that deadline. The request for an extension of time does not change the deadline to submit an appeal. See Notice of Rights.

### **RESERVATION OF RIGHTS**

In issuing this Order and Assessment, 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 the Respondents. 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.

### **NOTICE OF RIGHTS**

The Respondents may appeal this Order and Assessment. Tenn. Code Ann. § 68-215-119. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondents received this Order and Assessment or this Order and Assessment will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 68-215-119; Tenn. Code Ann. §§ 4-5-301 to -326 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny the Order and Assessment. Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review (appeal) must be directed to the Commissioner of the Tennessee Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243-1548. The petition may be mailed or delivered to this address, or it may be sent to [TDEC.Appeals@tn.gov](mailto:TDEC.Appeals@tn.gov). Payments of the civil penalty and/or damages shall be made payable to the

“Treasurer, State of Tennessee” and sent to the Division of Fiscal Services – Consolidated Fees Section, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Paige Ottenfeld, Division of Underground Storage Tanks, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 12<sup>th</sup> Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, FDA23-0022, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Underground Storage Tanks, Tennessee Department of Environment and Conservation, on this 28th day of June, 2023.



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

Reviewed by:



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