

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:

**MAC'S CONVENIENCE STORES LLC)
d/b/a CIRCLE K # 4701686)**

No. APCP-2024-015

**Proceeding Under the)
Missouri Air Conservation Law)**

ADMINISTRATIVE ORDER ON CONSENT

NOTICE TO THE RESPONDENT

The issuance of this Administrative Order on Consent No. APCP-2024-015 (Order) by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because MAC's CONVENIENCE STORES LLC (Respondent), d/b/a CIRCLE K # 4701686, is in violation of Missouri Air Conservation Law, Chapter 643, of the Revised Statutes of Missouri (RSMo), and its implementing regulations. This Order is issued under Sections 643.060(4), 643.080, and 643.085, RSMo. Failure to comply with this Order is, by itself, a violation of the Missouri Air Conservation Law under Section 643.151.3, RSMo.

FINDINGS OF FACT

1. MAC'S CONVENIENCE STORES LLC, is an active limited liability company registered with the Missouri Secretary of State. MAC'S CONVENIENCE

STORES LLC operates under the registered and active fictitious name CIRCLE K # 4701686.

2. The Respondent owns and operates CIRCLE K # 4701686, a gasoline dispensing facility (GDF), located at 3010 Lakeside Park Drive, St. Peters, in St. Charles County, Missouri.

3. 10 CSR 10-5.220 "Control of Emissions During Petroleum Liquid Storage, Loading, and Transfer" regulates gasoline deliveries at gasoline dispensing facilities in the St. Louis City, Jefferson, St. Charles, Franklin, and St. Louis counties. This rule is necessary to achieve the federally mandated reduction of hydrocarbon emissions in the St. Louis metropolitan area that contribute to the formation of ozone. This rule requires the owner/operator to notify the Department before installing a new GDF or modifying an existing GDF that requires complete replacement of the Stage I vapor recovery system of one (1) or more under-ground storage tanks.

4. 10 CSR 10-5.220(3)(F)1. states "Any owner or operator subject to paragraph (3)(C)2. installing a new GDF or modifying an existing GDF that requires a complete replacement of the Stage I vapor recovery system of one (1) or more underground storage tank shall— A. Notify the department using an approved form at least fourteen (14) days before installation. The notification shall include complete diagrams, a thorough description of the planned installation, a detailed description of the storage tank(s), plumbing diagrams including vent lines, and a schedule of construction. The notification shall also include a list of CARB approved ninety-eight percent (98%) efficient equipment and/or reference department approval for the proposed Stage I vapor

recovery system. The notice is valid for one hundred eighty (180) days from receipt by the department.”

5. On June 5, 2023, construction began on the new Circle K #4701686 GDF. Circle K # 4701686, owned and operated by MAC’S CONVENIENCE STORES LLC, commenced construction of a new Gasoline Dispensing Facility (GDF) with vapor recovery equipment without first submitting a Complete Replacement Construction Notification to the Department at least fourteen (14) days before installation.

6. On June 26, 2023, the Department’s Underground Storage Tank Compliance and Technology Unit received an Underground Tank Installation Notification for Circle K #4701686.

7. On January 3, 2024, the Department received Three-Year Vapor Recovery Test notifications for Circle K #4701686, for the required testing due within 30 days of construction completion. It was then discovered that a Complete Replacement Construction Notification was never received by the Department before construction began.

8. On January 4, 2024, a Complete Replacement/Construction Notification was submitted to the Department by United Petroleum Company, with a list of vapor recovery parts used.

9. On January 17, 2024, the Department’s St. Louis Regional Office (SLRO) issued a Referral Notice of Violation (RNOV) No. SL240013 to the Respondent to document the violation identified.

10. The amount of the administrative penalty is assessed according to the criteria of 10 CSR 10-6.230, “Administrative Penalties.” From a gravity-based analysis, it

has been determined the violation of 10 CSR 10-5.220 is a moderate potential for harm and a moderate extent of deviation from the requirement. The violation of 10 CSR 10-5.220 that occurred at Circle K # 4701686 on June 5, 2023, was a moderate potential for harm because the Respondent's actions had a substantial impact on the Department's ability to implement the regulation, and was a moderate extent of deviation because the Respondent was aware of the notification requirements. Using the gravity-based matrix and finding the potential for harm as moderate and the extent of deviation as moderate, and considering adjustment factors including fairness and equity, the assessed penalty is \$5,029.

STATEMENT OF VIOLATIONS

The Department finds that the following violations of the Missouri Air Conservation Law, Chapter 643, RSMo, and its implementing regulations have occurred, thereby subjecting the Respondent to penalties as described in Sections 643.151 and 643.085, RSMo:

11. The Respondent failed to submit a Complete Replacement Construction Notification for construction of a new gasoline dispensing facility with the installation of a Stage I vapor recovery system, which is a violation of 10 CSR 10-5.220 "Control of Emissions During Petroleum Liquid Storage, Loading, and Transfer." 10 CSR 10-5.220 requires a Complete Replacement Construction Notification to be submitted to the Department at least fourteen (14) days before vapor recovery system installation. On January 4, 2024, the Department received a Complete Replacement Construction Notification form from United Petroleum Company regarding the vapor recovery system installation at Circle K #4701686.

AGREEMENT

12. The Department and the Respondent desire to amicably resolve all claims that the Department might bring against the Respondent for violation of the Missouri Air Conservation Law and regulations described above and within RNOV No. SL240013. The Department and the Respondent agree that this Order resolves only the specific violations described herein, that this Order shall not be construed as a waiver or a modification of any requirements of the Missouri Air Conservation Law and regulations or any other source of law, and that this Order does not resolve any claims based on any failure by the Respondent to meet the requirements of this Order, or claims for past, present, or future violations of any statutes or regulations other than those specifically referenced herein.

13. The provisions of this Order apply to and bind the parties executing this Order, their agents, subsidiaries, successors, assigns, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties agreeing hereto. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, do not affect the responsibilities of the Respondent under this Order. If the Respondent sells or otherwise transfers its business or the real estate that is the situs of the violation referenced in this Order, then the Respondent shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of the Respondent under this Order in writing. In such event, the Respondent shall provide thirty (30) days prior written notice of such assumption to the Department.

14. The Respondent agrees to comply with the Missouri Air Conservation Law and regulations and, in particular, to refrain from further violations of 10 CSR 10-5.220, for all future operations.

PENALTY

15. To resolve the violations listed under Statement of Violations, the Respondent agrees to a penalty in the amount of \$5,029, of which shall be paid by **certified check** made payable to the "St. Charles County Treasurer, as trustee for the St. Charles County School Fund." The penalty is reduced to \$4,023 (80 percent of the assessed penalty) based on payment received within thirty (30) days of the date the Order is sent to the Respondent and the expectation of the Respondent's full participation in the conference, conciliation, and persuasion process. The Respondent shall mail the payment along with the signed Order to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

OTHER PROVISIONS

16. This Order resolves the claims of the Department for the specific violations and concerns stated herein through the effective date of this Order.

17. The Department reserves all legal and equitable remedies available to enforce the provisions of this Order, except as stated in the previous paragraph. This Order shall not be construed to limit the rights of the Department to obtain penalties or injunctive relief under the Clean Air Act, the Missouri Air Conservation Law or the implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in the previous paragraph. The Department

further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare of the environment arising at, or posed by the Respondent, whether related to the violations addressed in this Order or otherwise.

18. By signing this Order, all signatories assert that they have read and understand the terms of this Order, that they had the opportunity to consult with counsel, and that they have the authority to sign this Order on behalf of their respective parties.

19. This Order shall be construed and enforced according to the laws of the State of Missouri, and the terms stated herein shall constitute the entire and exclusive agreement of the parties hereto with respect to the matters addressed herein. This Order may not be modified orally.

20. If any provision of this Order is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

21. Penalty payments under this Order, including any stipulated penalties, are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i). For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2)(iii)(A), certain costs incurred by performance of this Order may qualify as restitution, remediation, or costs required to come into compliance with the law. **MAC'S CONVENIENCE STORES LLC** is solely responsible for providing to the Department complete, accurate, and necessary information by the close of any applicable tax year to complete a Form 1098-F. 26 CFR § 1.6050X-1 requires the Department to file a Form 1098-F if it reasonably

believes that the sum of the Costs and penalty is \$50,000 or more. The Department will not file a form 1098-F unless the Department is aware or has reason to believe the sum of the Costs and penalty is \$50,000 or more; it is the Respondent's responsibility to tell the Department if the sum of the Costs and penalty is \$50,000 or more. The Respondent is required by law to give its taxpayer identification number (TIN) to the Department for the Form 1098-F; the Respondent may be penalized by the U.S. Internal Revenue Service if it fails to furnish its TIN pursuant to sections 26 CFR §§ 301.6723, 301.6724(d)(3), and any other applicable law. However, failure to provide the TIN does not trigger penalties under the Order or state law. The Department shall not be responsible for any incomplete or inaccurate information nor the results of any tax audit. No portion of any penalties paid pursuant to this Order may be used to reduce any federal or state tax obligations, except as authorized by the Internal Revenue Service.

22. Nothing in this Order excuses the Respondent for any future non-compliance with the laws of the State of Missouri, and the Department expressly reserves the right to address future noncompliance in any manner authorized by law.

23. This Order will become final, effective, and fully enforceable upon the date the Department signs it. The Department shall send a fully executed copy of this Order to the Respondent for their records.

CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to this Order shall be directed to the following persons, subject to change upon written notification from either party:

For the Department:

Daniel Reed
Compliance and Enforcement Section
Air Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

For the Respondent:

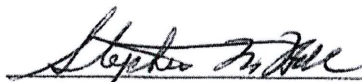
CSC Lawyers Incorporating Service Company
221 Bolivar Street
Jefferson City, MO 65101

RIGHT OF APPEAL

By signing this Order, the Respondent waives any right to appeal, seek judicial review, or otherwise challenge this Order pursuant to Sections 643.130, 643.085, or 621.250, RSMo, Chapters 536, 643, or 640, RSMo, 10 CSR 10-1.030, or any other source of law.

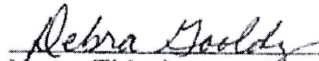
AGREED TO AND ORDERED:

**MISSOURI DEPARTMENT OF
NATURAL RESOURCES**



Stephen M. Hall, Director
Air Pollution Control Program

**MAC'S CONVENIENCE
STORES LLC**



Name, Title Debra Gooldy
Assistant Secretary

Date: 2-26-2025

Date: January 20, 2025