



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
Division of Underground Storage Tanks  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 12<sup>th</sup> Floor  
Nashville, Tennessee 37243

July 21, 2020

Mac's Convenience Stores LLC  
c/o Corporation Service Company, Registered Agent  
2908 Poston Avenue  
Nashville, Tennessee 37203-1312

Certified Mail No 9414 7266 9904 2154 8927 65

Re: Circle K Store No. 4703672  
5341 Poplar Avenue  
Memphis, Tennessee 38119  
Facility ID # 9-791579  
Case # UST19-0125

Dear Sir or Madam:

Enclosed is an Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks. The violation was discovered during a facility inspection conducted on November 27, 2018. Specifically, Division personnel discovered:

Violation #3: Failure to install, operate, and maintain release detection in accordance with the manufacturer's instructions in accordance with Rule 0400-18-01-.04(1)(a)2.

<u>Individual Civil Penalty Amount for Violation</u>	<u>Multiplication Factor</u>	<u>Total</u>
\$3,200.00	3	\$9,600.00

**Total Amount of your Civil Penalty: \$9,600.00**

The record reflects that, upon being notified, you performed the necessary actions to address the violation and returned to compliance. The Division is appreciative of your effort to return to compliance. For this reason, please note that the enclosed Order provides that you may resolve this matter without appeal for a **reduction of up to one hundred percent** in the above civil penalty.

**Please carefully review the enclosed Order, including the Options set out in Section XVII., and the Notice of Rights, which explains the appeal process.** If you elect Option A or Option B, then you must submit payment, on or before the 31<sup>st</sup> day after receipt of this Order. Payment shall be submitted to the following address:

Department of Environment & Conservation  
Division of Fiscal Services – Fee Section  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 10<sup>th</sup> Floor  
Nashville, Tennessee 37243

Payment of the civil penalty shall be made payable to the "Treasurer, State of Tennessee". The case number shown on the first page of the enclosed Order should be written on said payment(s).

If you accept Option C, the Division's offer to resolve this matter by attending Underground Storage Tank Training, then you must return the enclosed REQUEST TO ATTEND UNDERGROUND STORAGE TANK TRAINING form on or before the 31<sup>st</sup> day after receipt of this Order. Return the request form to the following address:

Hannah Nodell  
Nashville Environmental Field Office  
711 R.S. Gass Boulevard  
Nashville, Tennessee 37216

If you decline the options set out in Section XVII., then you may choose to exercise your right to appeal by the deadline stated in the Notice of Rights.

If you neither accept the Division's offer nor timely appeal, then the entire civil penalty amount of \$9,600.00 will become due and subject to collection.

If you have any questions about this matter, please call Hannah Nodell at (615) 253-3236.

Sincerely,



Stanley R. Boyd  
Director

cc: Enforcement file  
Memphis Environmental Field Office

<b>AUTOMATIC ENFORCEMENT VIOLATIONS</b>		
<b>Violation</b>	<b>State Cite</b>	<b>Rule Section</b>
Failure of tanks installed after July 27, 2007 to be secondarily contained.	0400-18-01-.02(2)(a)1	UST Systems: Installation & Operation (Secondary Containment)
Failure to provide interstitial monitoring on tanks installed after July 24, 2007.	0400-18-01-.02(2)(a)5	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed after July 27, 2007 to be secondarily contained.	0400-18-01-.02(2)(b)1	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed after July 25, 2007 to be monitored for a release at least every thirty (30) days.	0400-18-01-.02(2)(b)5	UST Systems: Installation & Operation (Secondary Containment)
Failure to install any spill prevention system.	0400-18-01-.02(3)(a)1(i)	UST Systems: Installation & Operation
Failure to install any overfill prevention system.	0400-18-01-.02(3)(a)1(ii)	UST Systems: Installation & Operation
Failure to provide any cathodic protection for metal tanks.	0400-18-01-.02(4)(a)	UST Systems: Installation & Operation
Failure to permanently close a lined tank where CP was not added by the December 22, 2012 deadline.	0400-18-01-.02(4)(a)3(v)	UST Systems: Installation & Operation
Failure to provide any cathodic protection for metal piping.	0400-18-01-.02(4)(b)	UST Systems: Installation & Operation
Failure to provide release detection method capable of detecting a release from tank or piping that routinely contains product.	0400-18-01-.04(1)(a)1	Release Detection (General)
Failure to install, calibrate, operate, or maintain release detection method in accordance with manufacturer's instructions.	0400-18-01-.04(1)(a)2	Release Detection (General)
Failure to provide a release detection method that meets the performance requirements for tanks or piping.	0400-18-01-.04(1)(a)3	Release Detection (General)
Failure to monitor tanks at least every 30 days, if appropriate.	0400-18-01-.04(2)(a)	Release Detection (General)
Failure to provide any release detection for underground piping.	0400-18-01-.04(2)(b)	Release Detection (Piping)
Failure to install line leak detector for pressurized underground piping.	0400-18-01-.04(2)(b)1(i)	Release Detection (Pressurized Piping)
Failure to conduct annual line tightness test or do monthly monitoring on pressurized underground piping.	0400-18-01-.04(2)(b)1(ii)	Release Detection (Pressurized Piping)
Failure to comply with general remedial requirements.	0400-18-01-.06	Petroleum Release Response, Remediation, and Risk Management
Division not notified of tank closure.	0400-18-01-.07(4)(a)1-2	Out-of-Service UST Systems and Closure
Failure to conduct system closure sampling.	0400-18-01-.07(5)(a)-(b)	Out-of-Service UST Systems and Closure
Failure to register an underground storage tank in accordance with the statute.	Tenn. Code Ann. § 68-215-106(a)	Tennessee Code Annotated
Placing petroleum into an underground storage tank system(s) where the Division has attached a tag or notice to the dispensers or fill ports or that has been placed on the Delivery Prohibition list on the website.	Tenn. Code Ann. §§ 68-215-106(c) and (e) 0400-18-01-.10(6)(a)	Fee Collection
Illegal Red Tag Removal	Tenn. Code Ann. § 68-215-106(c)-(d)	Tennessee Code Annotated

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

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF UNDERGROUND</b>
	)	<b>STORAGE TANKS</b>
<b>MAC'S CONVENIENCE STORES LLC</b>	)	
	)	<b>CASE NO. UST19-0125</b>
<b>RESPONDENT</b>	)	<b>FACILITY: CIRCLE K STORE NO. 4703672</b>

**ORDER AND ASSESSMENT**

NOW COMES David W. Salyers, P.E., Commissioner of the Tennessee Department of Environment and Conservation ("Commissioner"), and states:

**PARTIES**

**I.**

David W. Salyers, P.E. is the duly appointed Commissioner of the Tennessee 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. sections 68-215-101 to -129. Stanley R. Boyd is the duly appointed Director ("Director") of the Underground Storage Tank Division ("Division"). He has received written delegation from the Commissioner to administer and enforce particular aspects of the Act.

**II.**

Mac's Convenience Stores LLC ("Respondent") 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 owner of three underground storage tank ("UST") systems located at 5341 Poplar Avenue, Memphis, Tennessee 38119. Service of process may be made on the Respondent's Registered Agent, Corporation Service Company, at 2908 Poston Avenue, Nashville, Tennessee 37203-1312.

**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 red tag 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 underground storage tanks have been promulgated pursuant to Tenn. Code Ann. section 68-215-107(f) and are effective as Tenn. Comp. R. & Regs. 0400-18-01-.01 to - .17 ("Rules").

#### **IV.**

The Respondent is a person as defined at Tenn. Code Ann. section 68-215-103(11) and has violated the Act as hereinafter stated.

#### **FACTS**

#### **V.**

On or about November 1, 2017, the Division received a Notification for Underground Storage Tanks forms listing the Respondent as the owner of the three UST systems located at 5341 Poplar Avenue, Memphis, Tennessee 38119. The facility ID number is 9-791579.

#### **VI.**

On or about November 6, 2018, Division personnel contacted Candace Henderson, Authorized Representative, and scheduled the compliance inspection to be conducted on November 27, 2018.

#### **VII.**

On or about November 27, 2018, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

- Violation #1: Failure to keep spill catchment basins free of water, dirt, debris, and/or other substances in accordance with Rule 0400-18-01-.02(3)(b)3. Specifically, at the time of inspection, there was liquid/debris in the spill catchment basins for Tank 1A (unleaded), Tank 2A (diesel), and Tank 3A (premium).
- Violation #2: Failure to use spill prevention equipment that will prevent release of petroleum to the environment in accordance with Rule 0400-18-01-.02(3)(a)1(i). Specifically, at the time of

inspections, the double wall spill catchment basins for Tank 1A, Tank 2A, and Tank 3A had liquid in the interstice space.

Violation #3: Failure to install, operate, and maintain release detection in accordance with the manufacturer's instructions in accordance with Rule 0400-18-01-.04(1)(a)2. Specifically, the following was identified:

- Tank 1A, Tank 2A, and Tank 3A were missing 12 months of the raw data;
- Tank 1A, Tank 2A, and Tank 3A were missing the January 2018 SIR results; and
- SIR results indicated a passing result when the calculated leak rate exceeded the 0.1 gph threshold for Tank 1A for March, April, June, July, August, September, and October 2018, Tank 2A for June through September 2018, and Tank 3A for May, June, August, and September 2018.

#### **VIII.**

On or about December 21, 2018, Division personnel sent a Results of Compliance Inspection – Action Required certified letter to Candace Henderson. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by January 21, 2019, to demonstrate compliance. U.S. Postal Service tracking records delivery on December 27, 2018.

#### **IX.**

On or about January 21, 2019, the Division received an extension request from Candace Henderson for more time to address the violations at the facility.

#### **X.**

On or about January 25, 2019, Division personnel sent a letter to Candace Henderson granting an extension to submit documentation to the Division by February 25, 2019, to demonstrate compliance.

#### **XI.**

The Division received documentation showing liquid was removed from the spill buckets and float gauges were removed and reinstalled. This documentation confirmed that Violation #1 and Violation #2, discovered during the inspection, had been addressed.

**XII.**

On or about April 17, 2019, Division personnel sent a Follow-up Letter and Enforcement Action Notice certified letter to Candace Henderson. The letter cited the violations discovered during the inspection and the response received by the Division to address Violation #1 and Violation #2. U.S. Postal Service tracking records delivery on April 22, 2019.

**XIII.**

On or about September 20, 2019, Division personnel sent a Notice of Violation certified letter to Candace Henderson. The letter cited the outstanding violation discovered during the inspection and required the Respondent to submit documentation to the Division by October 20, 2019, to demonstrate compliance. U.S. Postal Service tracking records delivery on September 26, 2019.

**XIV.**

On or about October 2, 2019, the Division received release detection results for August 2018 through October 2019. The documentation confirmed that Violation #3, discovered during the inspection, had been addressed, and the facility had returned to operational compliance.

**VIOLATIONS**

**XV.**

By failing to operate a petroleum underground storage tank in compliance with the Act, the Respondent has violated Tenn. Code Ann. section 68-215-104(2), 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;

**XVI.**

By failing to install, operate, and maintain release detection in accordance with the manufacturer's instructions, the Respondent has violated Rule 0400-18-01-.04(1)(a)2, which states:

0400-18-01-.04 RELEASE DETECTION.

- (1) General requirements for release detection.
  - (a) Owners and/or operators of UST systems shall provide a method, or combination of methods, of release detection that:

2. Is installed and calibrated in accordance with the manufacturer's instructions and is operated and maintained in accordance with one of the following:
  - (i) The manufacturer's instructions;
  - (ii) A code of practice developed by a nationally recognized association or independent testing laboratory; or
  - (iii) Requirements determined by the Division to be no less protective of human health and the environment than the two options listed in subparts (i) and (ii) of this part.

### **ORDER AND ASSESSMENT**

#### **XVII.**

Pursuant to the authority vested by Tenn. Code Ann. sections 68-215-107, -114, and -121, I, Stanley R. Boyd, acting as the authorized representative of the Commissioner, hereby issue the following Order and Assessment to the Respondent:

1. The Respondent is assessed a civil penalty of \$9,600.00 and must complete one of the following options:

**Option A. Full Civil Penalty Payment Option:**

On or before the 31<sup>st</sup> day after receiving this Order, the Respondent shall pay the **full civil penalty** in the amount of \$9,600.00.

**Option B. Twenty Percent Civil Penalty Payment Option:**

- i. On or before the 31<sup>st</sup> day after receiving this Order, the Respondent shall pay 20% of the civil penalty. Twenty percent of the civil penalty is \$1,920.00.
- ii. If the Respondent timely pays the 20% payment, then the Respondent shall pay the remaining 80% of the civil penalty, \$7,680.00, if and only if, the Division determines that an automatic enforcement violation has occurred at the facility during a one-year period to commence on the date of receipt of this Order. Payment of the remaining 80% of the civil penalty shall be due within 30 days after the automatic enforcement violation is discovered. A list of the violations that are treated as automatic enforcement violations for the purposes of this Order was enclosed with the Order.
- iii. In the event that the Division discovers any violation, including non-automatic enforcement violations, it reserves the right to assess additional civil penalties and to take any and all other enforcement actions that it deems necessary.

**Option C. Underground Storage Tank Training Option:**

- i. On or before the 31<sup>st</sup> day after receiving this Order, the Respondent shall return a signed Request to Attend Underground Storage Tank Training form to the address that appears on the request form, which is enclosed. The Respondent must attend Underground Storage Tank Training within **one year** after receiving this Order.
  - ii. If the Respondent timely submits the Request To Attend Underground Storage Tank Training, then the Respondent shall pay the **full civil penalty**, if and only if, one of the following occurs:
    - a. The Respondent fails to successfully complete attendance at Underground Storage Tank Training. If the Respondent does not successfully attend the training, then payment of the full civil penalty shall be due within 30 days after expiration of the one-year period; or
    - b. The Division determines that an automatic enforcement violation has occurred at the facility during a one-year period to commence on the date of receipt of this Order. Payment of the civil penalty shall be made within 30 days following discovery of the automatic enforcement violation. A list of the violations that are treated as automatic enforcement violations for the purposes of this Order was enclosed with the Order.
  - iii. In the event that the Division discovers any violation, including non-automatic enforcement violations, it reserves the right to assess additional civil penalties and to take any and all other enforcement actions that it deems necessary.
2. **Failure to comply with any of the requirements of this Order could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.**

### **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 Respondent(s). 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).

### **NOTICE OF RIGHTS**

The Respondent(s) 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 Respondent(s) 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. § 69-3-110; Tenn. Code Ann. § 4-5-301 to -325 (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 Hannah Nodell, Nashville Environmental Field Office, 711 R.S. Gass Boulevard, Nashville, Tennessee 37216. Attorneys should contact the undersigned counsel of record. **The case number, UST19-0117, 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 21st day of July, 2020.



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

Reviewed by:



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.. (Jul 21, 2020 10:35 CDT)

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George S. Bell, III  
BPR# 19051  
Assistant General Counsel  
Department of Environment & Conservation  
312 Rosa L. Parks Avenue, 2d Floor  
Nashville, Tennessee 37243  
615-741-3842  
[George.Bell@tn.gov](mailto:George.Bell@tn.gov)



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
Division of Underground Storage Tanks  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 12<sup>th</sup> Floor  
Nashville, Tennessee 37243**

**REQUEST TO ATTEND UNDERGROUND STORAGE TANK TRAINING ONLINE**

Please complete this form to attend training on the proper operation of underground storage tanks in accordance with rules established by the State of Tennessee. This form serves as a reservation to attend UST systems and maintenance training online with the Division of Underground Storage Tanks.

Please use an active email address when completing this form as it will be the primary way the Division will provide information about the class and the web link to attend. Please carefully read the requirements below to successfully attend online Tank School. If any of these requirements cannot be met and you would still like to attend Tank School, please check this box:

Tank school classes are offered on specific dates throughout the year. All classes are from 8:30 am to 4:00 pm Central time / 9:30 am to 5:00 pm Eastern time. The Division usually schedules 3 tank school classes per year with make-up sessions available as needed. After receipt of this completed form, the Division will schedule a class with you.

I, \_\_\_\_\_ (Please Print Your Name), request to attend training on the proper operation of underground storage tanks.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

My contact information is: Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

Mail or Email this Request to:  
Hannah Nodell  
Nashville Environmental Field Office  
11 R.S. Gass Boulevard  
Phone #615-253-3236  
Hannah.Nodell@tn.gov

**REQUIREMENTS TO ATTEND ONLINE TANK SCHOOL**

- ✓ Access to a computer and reliable/good internet connection [1.0 Mbps (Receive) and 1.5 Mbps (Send) is recommended].
- ✓ Access to reliable (charged/wired) audio source (i.e., cell phone, computer speakers, headset, etc.)
- ✓ Valid email address
- ✓ Ability to complete an online pre-test prior to class and an online post-test after the class presentation.
- ✓ Ability to participate and attend entire online class (approximately 6 hours).