

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
MAPCO EXPRESS, INC)	
)	CASE NO. FDA23-0009
RESPONDENT)	FACILITY: MAPCO EXPRESS NO 3538

ORDER AND ASSESSMENT

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 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.

Mapco Express, Inc. ("Respondent") is a corporation created in the State of Delaware and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of five underground storage tank ("UST") systems located at 3709 Cummings Highway, Chattanooga, Tennessee 37419. Service of process may be made on the Respondent's Registered Agent, United Corporate Services Inc., at 401 Commerce Street, Suite 710, Nashville, Tennessee 37219.

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 Respondent is a person as defined at Tenn. Code Ann. § 68-215-103(11) and a responsible party as defined at Tenn. Code Ann. §§ 68-215-103(17)(A)(i) and (ii) and has violated the Act as hereinafter stated.

FACTS

V.

On or about March 8, 2016, the Division received a Notification for Underground Storage Tanks form, signed by Randall Masters, listing the Respondent as the owner of the five UST systems located at 3709 Cummings Highway, Chattanooga, Tennessee 37419. The facility ID number is 3-331024.

VI.

On July 11, 2022, Division personnel received an analytical report dated July 8, 2022, that reported extractible petroleum hydrocarbons above initial screening levels in three samples. This is considered a suspected release and must be investigated.

VII.

On July 12, 2022, Division personnel received an analytical report dated that day that reported xylenes above screening levels. This is considered a confirmed release by the Division and requires further investigation.

VIII.

On July 21, 2022, Division personnel performed an inspection at the facility. At this time, the following violations were discovered:

Violation #1: Failure to test spill prevention equipment at least once every three years in accordance with Rule 0400-18-01-.02(3)(c)1. Specifically, at the time of the inspection, spill bucket integrity testing had not been performed for the premium and mid-grade tank spill buckets.

Violation #2: Failure to install overfill prevention systems in accordance with Rule 0400-18-01-.02(3)(a)1.(ii). Specifically, at the time of the inspection, the overfill devices for the regular unleaded and kerosene tank systems had failed the overfill inspections and not been repaired or replaced.

Violation #3: Failure to conduct overfill prevention equipment inspections at least once every three years in accordance with 0400-18-01-.02(3)(c)2. Specifically, at the time of the inspection, the overfill devices associated with the premium and mid-grade tank systems had not been inspected.

IX.

On or about July 28, 2022, Division personnel received an Application for Fund Eligibility from the Respondent for the July 8, 2022, release at the facility.

X.

On August 30, 2022, the Division received:

- passing spill bucket integrity testing for the premium and mid-grade spill buckets,
- passing overfill inspection reports after the replacement of the inadequate overfill devices, and;
- verification that operator retraining had been successfully completed

This documentation verified the violations discovered at the time of the inspection had been corrected and the facility had returned to operational compliance.

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 spill prevention equipment at least once every three years in accordance with Rule 0400-18-01-.02(3)(c)1.
- Failure to install any overfill prevention system in accordance with Rule 0400-18-01-.02(3)(a)1(ii).
- Failure to conduct overfill prevention equipment inspections at least once every three years in accordance with 0400-18-01-.02(3)(c)2.

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 has violated Tenn. Code Ann. § 68-215-104(1), 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 spill prevention equipment at least once every three years, the Respondent has violated Rule 0400-18-01-.02(3)(c)1.

0400-18-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

- (3) Spill and overfill prevention.
 - (c) Periodic testing of spill prevention equipment and periodic inspection of overfill prevention equipment.
 - 1. Monitoring. Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) must prevent releases to the environment by meeting one of the following:

XIV.

By failing to install any overfill prevention system, the Respondent has violated Rule 0400-18-01-.02(3)(a)1(ii), which states:

0400-18-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

- (3) Spill and overfill prevention.
 - (a) Equipment.
 - 1. Except as provided in part 2 of this subparagraph, to prevent spilling and overfilling associated with petroleum transfer to the UST system, owners and/or operators shall use the following spill and overfill prevention equipment:
 - (ii) Overfill prevention equipment that will:
 - (I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full;
 - (II) Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm; or

- (III) Restrict flow thirty (30) minutes prior to overfilling, alert the operator with a high level alarm one (1) minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on top of the tank are exposed to product due to overfilling.

XV.

By failing to perform overfill prevention system inspections every three years, the Respondent has violated Rule 0400-18-01-.02(3)(c)2, which states:

0400-18-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

- (3) Spill and overfill prevention.
 - (c) Periodic testing of spill prevention equipment and periodic inspection of overfill prevention equipment.
 - 2. Inspections. Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in subpart (a)1.(ii) of this paragraph and will activate when petroleum reaches that level. Inspections must be conducted in accordance with one of the criteria in items 1.(ii)(I) through (IV) of this subparagraph.

ORDER AND ASSESSMENT

XVI.

Pursuant to the authority vested by Tenn. Code Ann. sections 68-215-107 and -114.

I, Stanley R. Boyd, acting as the authorized representative of the Commissioner, hereby issue the following Order and Assessment to the Respondent:

1. The Application for Fund Eligibility for the July 8, 2022 release is approved with a deductible of \$10,000.
2. The Respondent shall perform the release investigation and remediation activities of Rule 0400-18-01-.06 within the timeframes determined by the Division.
3. 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.
4. 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 Respondent(s). To be eligible for this time extension, the Respondent(s) 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 Respondent(s)'s request in writing, establishing a new deadline for compliance with this Order. Should the Respondent(s) 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 Respondent. 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 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 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 -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, TN 37243-1548. The petition may be mailed or delivered to this address, or it may be sent to 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, TN 37243. Technical questions and other correspondence involving compliance issues should be sent to Paige Ottenfeld, Nashville Environmental Field Office, Division of Underground Storage Tanks, 711 R. S. Gass Boulevard, Nashville, TN 37216. Attorneys should contact the undersigned counsel of record. **The case number, FDA23-0009, 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 22nd day of November, 2022.



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

Reviewed by:



Ashley Ball (Nov 22, 2022 09:57 CST)

Ashley J. Ball
BPR# 025250
Senior Associate Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2d Floor
Nashville, Tennessee 37243
615-532-0142
Ashley.Ball@tn.gov