



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

April 27, 2021

Mapco Express, Inc.
c/o United Corporation, Inc., Registered Agent
401 Commerce Street, Suite 710
Nashville, Tennessee 37219-2449

Certified Mail No. 9315 4699 0430 0081 9860 90

Re: Mapco No. 3705
4409 Western Avenue
Knoxville, Tennessee 37921
Facility ID # 2-470756
Case # UST21-0029

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 violations were discovered during a facility inspection conducted on June 29, 2020. Specifically, Division personnel discovered:

Violation #1: Failure to use spill prevention system that will prevent a release of petroleum to the environment when the transfer hose is detached in accordance with Rule 0400-18-01-.02(3)(a)1(i). Specifically, at the time of inspection, a torn boot was discovered in the spill bucket associated with Tank #6A (12,000 gallon regular gasoline).

<u>Individual Civil Penalty Amount for Violation</u>	<u>Multiplication Factor</u>	<u>Total</u>
\$2,000.00	1	\$2,000.00

Violation #2: Failure to install, calibrate, operate, or maintain release detection method for tank in accordance with manufacturer's instructions in accordance with Rule 0400-18-01-.04(1)(a)2. Specifically, at the time inspection, all tanks were programmed to a 1-point profile. Fiberglass tanks must be programmed to a 4-point profile.

<u>Individual Civil Penalty Amount for Violation</u>	<u>Multiplication Factor</u>	<u>Total</u>
\$3,200.00	4	\$12,800.00

Total Amount of your Civil Penalty: \$14,800.00

The record reflects that, upon being notified, you performed the necessary actions to address the violations 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 eighty percent** in the above civil penalty.

Please carefully review the enclosed Order, including the Options set out in Section XIX., 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 31st 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, 10th 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 decline the options set out in Section XIX., 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 \$14,800.00 will become due and subject to collection.

If you have any questions about this matter, please contact Ethan Ralph at Ethan.Ralph@tn.gov or (615) 687-7094.

Sincerely,



Stanley R. Boyd
Director

cc: Enforcement File
Knoxville Environmental Field Office

SIGNIFICANT OPERATIONAL COMPLIANCE VIOLATIONS		
Violation	State Cite	Rule Section
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

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
MAPCO EXPRESS, INC.)	
)	CASE NO. UST21-0029
RESPONDENT)	FACILITY: MAPCO NO. 3705

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.

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 4409 Western Avenue, Knoxville, Tennessee 37921. Service of process may be made on the Respondent's Registered Agent, United Corporation, Inc., at 401 Commerce Street, Suite 710, Nashville, Tennessee 37219-2449.

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.

The Respondent has previously been the subject of enforcement action. At that time, the Respondent was offered the opportunity to attend Underground Storage Tank Training provided by the Division. The Respondent attended the training on November 13, 2019.

VI.

On or about October 31, 2012, the Division received a Notification for Underground Storage Tanks form, signed by Brian Parnell, listing the Respondent as the owner of the five UST systems located 4409 Western Avenue, Knoxville, Tennessee 37921. The facility ID number is 2-470756.

VII.

On or about June 16, 2020, Division personnel contacted Randall Masters by phone and scheduled a compliance inspection to be conducted on June 29, 2020. On or about June 17, 2020, Division personnel also sent a letter confirming the inspection date.

VIII.

On or about June 29, 2020, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

Violation #1: Failure to use spill prevention system that will prevent a release of petroleum to the environment when the transfer hose is detached in accordance with Rule 0400-18-01-.02(3)(a)1(i). Specifically, at the time of inspection, a torn boot was discovered in the spill bucket associated with Tank #6A (12,000 gallon regular gasoline).

Violation #2: Failure to install, calibrate, operate, or maintain release detection method for tank in accordance with manufacturer's instructions in accordance with Rule 0400-18-01-.04(1)(a)2. Specifically, at the time inspection, all tanks were programmed on the automatic tank gauge ("ATG") to a 1-point profile. Fiberglass tanks must be programmed to a 4-point profile.

IX.

On or about July 16, 2020, Division personnel sent a Results of Compliance Inspection – Action Required certified letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by August 17, 2020, to demonstrate compliance.

X.

On or about January 14, 2021, the Division received compliance documentation pertaining to a violation discovered at the time of inspection. The passing result of a spill bucket integrity test conducted on the new spill bucket on the referenced tank was received; however, the test report indicated the test was conducted at 11 inches of vacuum and integrity tests on the interstice of a spill bucket should be conducted at a minimum of 15 inches of vacuum.

XI.

On or about January 21, 2021, Division personnel contacted Mr. Masters via email requesting the test be conducted at the appropriate vacuum pressure.

XII.

On or about February 2, 2021, the Division received compliance documentation addressing a violation discovered at the time of inspection. The passing results of a spill bucket integrity test conducted on the same date, at the appropriate vacuum pressure, were received. The documentation confirmed that Violation #1 discovered during the inspection had been addressed.

XIII.

On or about February 17, 2021, Division personnel sent a Follow-up Letter and Enforcement Action Notice certified letter to the Respondent. The letter cited the violations discovered during the inspection and the response received by the Division to address Violation #1.

XIV.

On or about March 3, 2021, the Division received compliance documentation addressing a violation discovered at the time of inspection. An ATG setup detailing all the tanks at the facility had been calibrated to a 4-point profile. The documentation confirmed that Violation #2 discovered during the inspection had been addressed, and the facility had returned to operational compliance.

VIOLATION

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 use a spill prevention system that will prevent a release of petroleum to the environment, the Respondent has violated Rule 0400-18-01-.02(3)(a)1(i), which states:

0400-18-01-.02 UST Systems: Installation and Operation.

(3) Spill and overfill prevention.

(a) Equipment.

1. Except as provided in parts 2 and 3 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 overflow prevention equipment:

- (i) Spill prevention equipment that will prevent release of petroleum to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

XVII.

By failing to properly calibrate the ATG console, 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:

ORDER AND ASSESSMENT

XVIII.

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 \$14,800.00 and must complete one of the following options:

Option A. Full Civil Penalty Payment Option:

On or before the 30th day after receiving this Order, the Respondent shall pay the **full civil penalty** in the amount of \$14,800.00.

Option B. Twenty Percent Civil Penalty Payment Option:

- i. On or before the 30th day after receiving this Order, the Respondent shall pay 20% of the civil penalty. 20% of the civil penalty is \$2,960.00.
- ii. If Respondent timely pays the 20% payment, then the Respondent shall pay the remaining 80% of the civil penalty, \$11,840.00, if and only if, the Division determines that a significant operational compliance 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 significant operational compliance violation is discovered. A list of the violations that are treated as significant operational compliance violations for the purposes of this Order was enclosed with the Order.

iii. In the event that the Division discovers any violation, including non-significant operational compliance 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. 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 Ethan Ralph, Nashville Environmental Field Office, 711 R.S. Gass Boulevard, Nashville, Tennessee 37216 or emailed to Ethan.Ralph@tn.gov. Attorneys should contact the undersigned counsel of record. **The case number, UST21-0029, 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 27th day of April, 2021.



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

Reviewed by:



.. (Apr 27, 2021 12:57 CDT)

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