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12-13-2011

NABIL MORSHED, GETWELL OIL CITY,  
INC., d/b/a GETWELL OIL CITY, formerly  
known as MINI MAX GAS AND FOOD,  
Respondents

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**BEFORE THE COMMISSIONER OF THE  
TENNESSEE DEPARTMENT OF AGRICULTURE**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>NABIL MORSHED,</b>	)	
<b>GETWELL OIL CITY, INC.,</b>	)	<b>Docket No. 01.18-113939J</b>
<b>d/b/a GETWELL OIL CITY,</b>	)	
<b><i>formerly known as</i></b>	)	
<b>MINI MAX GAS AND FOOD,</b>	)	
	)	
<b>Respondents.</b>	)	

**INITIAL ORDER GRANTING STATE’S MOTION FOR DEFAULT**

**NOTICE OF DEFAULT**

This matter came on to be heard in Nashville, Tennessee on December 13, 2011 before Joyce Grimes Safley, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Agriculture. Mr. Keith Hodges, attorney for the Tennessee Department of Agriculture represented the State. Claimant was not present, nor was anyone present on his behalf.

The subject of this hearing was whether or not the Respondent had violated T.C.A. §§47-18-1303, 47-18-1304, 47-18-1305, and 47-18-1307; Rules 0080-5-12-.01 and 0080-5-12-.01, *et seq.*, of the RULES OF THE TENNESSEE DEPARTMENT OF AGRICULTURE, TENN. COMP. R. & REGS. 0080-5-12-.01, *et seq.* by representing and selling gasoline as having an octane rating less than the rate posted at the service station and on the gasoline pumps.

It is determined that the Department of Agriculture met its burden of proof in this matter. Respondent did violate Tennessee Statutes and Department of Agriculture Rules set forth above, and is subject to penalties pursuant to T.C.A. §47-18-1304 and T.C.A. §62-21-130(a).

## **FINDINGS OF FACT**

1. The State showed that it served notice of the hearing upon the Respondent. The signed return mail receipt was made Exhibit 1 at the hearing.

2. It is determined that the State complied with applicable laws and regulations regarding notice to Respondent.

3. The State or Department moved, pursuant to T.C.A. §4-5-309 to proceed in default and present its evidence in this case. The State's motion to proceed in default was GRANTED, and the State was allowed to present its proof.

4. At the hearing of this matter, the Department of Agriculture called two witnesses: (1) Jeff Taylor, Inspector, Petroleum Quality Section, Department of Agriculture, and (2) Ed Coleman, Administrator, Petroleum Quality Section, Department of Agriculture.

5. Respondent Nabil Morshed is the registered agent for Getwell Oil City, Inc. Mr. Morshed operated and owned stock in a service station located at 1608 Getwell Road, in Memphis, Tennessee. The service station at issue in this case is "Mini Max Gas and Food" and/or "Getwell Oil City."

6. Respondents sold and conveyed motor fuels for consumption in Tennessee as contemplated by T.C.A. 47-18-1303(3).

7. On January 25, 2011, Department of Agriculture Inspector Jeff Taylor conducted an inspection at Mini Max Gas and Food, a/k/a Getwell Oil City, located at 1608 Getwell Road, Memphis, Tennessee.

8. During the inspection, Inspector Taylor drew a sample (Sample #637911278) from the “premium unleaded gasoline” pump, which was labeled “Minimum Octane Rating (R=M)/2 Method 93.”

9. Laboratory testing of the sample showed that the sample had an octane-rating or an anti-knock index (AKI) of 89.7, which was not the octane rating represented on the pump.

10. As a result of the Department’s findings, the Department of Agriculture issued a “stop sale order” to Respondents by phone and certified mail on February 1, 2011 (return receipt signed and dated February 4, 2011.)

11. On February 9, 2011, the Department sent a Notice of Violation and Enforcement Action to the Respondents by certified mail (return receipt signed and dated February 11, 2011.) The Notice assessed a civil penalty of \$1000, and advised Respondents that the civil penalty must be paid within thirty (30) days or the Respondents must request an appeal in thirty (30) days. Respondents did not reply, pay the penalty, or otherwise respond to the notice.

12. The Department sent a second Notice and demand for payment of civil penalty on April 15, 2011 (Return Receipt signed and dated April 16, 2011). Respondents have not paid the civil penalty nor otherwise responded to the Department’s Notice of Violations.

### **CONCLUSIONS OF LAW**

1. The Administrative Procedures Act, T.C.A. §4-5-309, sets forth the procedure for default hearings:

(a) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge or hearing officer, hearing the case alone,... may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

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2. The State showed that it had served the notice of the hearing upon the Respondents at the address of record.

3. Respondents failed to participate in the hearing of this matter.

4. The “TENNESSEE KEROSENE AND MOTOR FUELS QUALITY INSPECTION ACT OF 1989”, T.C.A. §47-18-1301, *et seq.*, governs this matter.

5. Its stated purpose, as set forth in T.C.A. § 47-18-1302, is to:

promote and protect the public health, safety and welfare by ensuring that kerosene and motor fuels:

- (1) Are adequately labeled and posted; and
- (2) Meet or exceed certain minimum standards of quality.

6. T.C.A. §47-18-1304 provides as follows:

(a) Kerosene and motor fuels conveyed for consumption in Tennessee shall be labeled and posted in accordance with applicable federal and state law.

(b) Kerosene and motor fuels conveyed for consumption in Tennessee shall meet the standards established for such products in the annual book of ASTM [American Society for Testing and Materials] standards, and supplements thereto;

7. “Convey for consumption” is defined by T.C.A. §47-18-1303(3) as:

to commercially refine, blend, store, transport, distribute, retail, or otherwise participate in the preparation or transmittal of kerosene or motor fuels for use by consumers within this state.

8. T.C.A. §47-18-1303(3) provides that the Tennessee Department of Agriculture shall, at least once per year, inspect and collect at least one sample for testing from each location which “motor fuel”.

9. T.C.A. §47-18-1307(a)(1) provides that anyone conveying motor fuel in violation of T.C.A. §47-18-1304 “shall be subject to an administrative fine, to issuance of a stop-sale order, or to both, in the discretion of the Commissioner.”

10. The Respondents “conveyed” gasoline in violation of T.C.A. §47-18-1307, subjecting them to administrative fines and continuing penalties if Respondents do not comply with the “stop order” and assessment of fines.

11. Respondents violated DEPARTMENT OF AGRICULTURE RULE 0080-5-12-.02(1)(d), which provides:

“Minimum Antiknock Index (AKI)” - the AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation[.]

12. Accordingly, the following is **ORDERED**, pursuant to T.C.A. §47-18-1304 and T.C.A. §62-21-130(a), Respondents, individually and severally, are assessed a civil penalty of \$1000.00 pursuant to T.C.A. §47-18-1304 which must be paid to the Department of Agriculture on or before the end of business on **March 26, 2012**. Additionally, Respondents are assessed the costs of this litigation, including but not limited to the investigation, prosecution and hearing of this matter, court reporter fees, and other fees associated with this case. The Department is ORDERED to serve a Bill of Costs upon the Respondents and file the same with the Administrative Procedures Division. Such costs shall be paid to the Department of Agriculture within thirty (30) days of receipt of the Bill of Costs.

IT IS SO ORDERED.

This Order entered and effective this 21 day of February, 2012

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looped initial 'T' and 'S'.

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Thomas G. Stovall, Director  
Administrative Procedures Division