



Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700
FAX (334) 271-7950

September 2, 2008

CERTIFIED MAIL 7007 0710 0001 6203 7144
RETURN RECEIPT REQUESTED

Mr. Keith Cahela
100 Rogers Avenue
Boaz, Alabama 35957

Re: Consent Order 08-199-CGW
Mt. Vernon Grocery
100 Rogers Avenue
Boaz, Marshall County, Alabama
UST Facility ID No. 11647-095-005721



Dear Mr. Cahela:

Enclosed please find Consent Order No. 08-199-CGW which requires you to take certain actions in regard to alleged violations of the Alabama Underground Storage Tank (UST) and Wellhead Protection Act. This order has been issued with your consent and is final and not appealable.

Please note the issuance date September 2, 2008. Payment of the civil penalty in the amount of **\$3,000 is due on or before October 17, 2008** and should be submitted to the ADEM Office of General Counsel at the above Montgomery address.

Pursuant to the terms of the consent order, all cited violations should now be corrected. If not, the UST systems should be placed in "temporary closure" until such time the violations are corrected.

This order requires you to provide a method of leak detection, to notify the Department of the method of leak detection, and to test mechanical line leak detectors.

If you have any questions please contact Lee Davis at (334) 271-7759.

Sincerely,


Wm. Gerald Hardy, Chief
Land Division

WGH/SSM/MLD/rh

Enclosures: 08-199-CGW, Notification Form

C: Mary-Frank Brown, Associate General Counsel, ADEM
Gerald Hardy, Chief, Land Division
Sonja Massey, Chief, Groundwater Branch, ADEM
Lee Davis, Chief, UST Compliance Unit, ADEM



**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)

Keith Cahela)

Mt. Vernon Grocery)

UST Facility ID No. 11647-095-005721)

Boaz, Marshall County, Alabama)

CONSENT ORDER

No. 08-199-CGW

PREAMBLE

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rplc. Vol.); and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter the "Department" or "ADEM") makes the following FINDINGS:

STIPULATIONS

1. Keith Cahela is the registered owner of a regulated underground storage tank (UST) facility located at Mt. Vernon Grocery, 100 Rogers Avenue, Boaz, Marshall County, Alabama, designated as ADEM Facility I.D. Number 11647-095-005721.
2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.).
3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rplc. Vol.), ADEM is the State Environmental Control Agency for the purposes of federal environmental law, including 42 U.S.C. §§ 6991 to 6991(m), as amended.
4. ADEM is authorized to administer and enforce the provisions of the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rplc. Vol.).

5. Based upon an inspection of the UST facility on January 16, 2008 and/or a review of facility records, the Department has documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code r. 335-6-15-.14, owners of new and existing UST systems must provide a method or combination of methods of release detection.

7. The owner has failed to provide a method of release detection, in violation of ADEM Admin. Code r. 335-6-15-.14.

8. Pursuant to ADEM Admin. Code r. 335-6-15-.14(5), owners of existing UST systems must submit to the Department a description of the type of release detection method or methods to be used at each UST site.

9. The owner has failed to submit to the Department a description of the type of release detection method used at each UST site, in violation of ADEM Admin. Code r. 335-6-15-.14(5).

10. Pursuant to ADEM Admin. Code r. 335-6-15-.18(a), owners of UST systems must conduct annual tests of the operation of automatic line leak detectors in accordance with the manufacturer's requirements.

11. The owner has failed to conduct annual tests of the automatic line leak detectors, in violation of ADEM Admin. Code r. 335-6-15-.18(a).

12. A Notice of Delinquency (NOD) dated January 29, 2008 was issued by the Department requesting within thirty days the submission of the leak detection records for the tanks, leak detection records from Group II for pressurized piping, and mechanical line leak detector test.

13. Pursuant to ADEM Admin. Code r. 335-6-15-.13, owners of UST systems must cooperate fully with inspections, monitoring and testing conducted by the Department as well as requests for document submission, submission of engineering or technical data, and testing and monitoring performed by the owner at the request of the Department.

14. The Owner has refused or otherwise failed to respond to the NOD dated January 29, 2008 and ADEM's requests for information, in violation of ADEM Admin. Code r. 335-6-15-.13.

CONTENTIONS

Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall be a separate violation.

In arriving at the civil penalty assessed in this matter, the Department has considered the following:

A. Seriousness of the Violation:

The Owner/Operator did not ensure that leak detection requirements were fully implemented and/or maintained, thereby undermining preventive measures designed to avoid releases. The violations impede the Department's regulatory authority over USTs for threats to public health, safety and the environment.

B. Standard of Care:

The Owner/Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. Economic Benefit Which Delayed Compliance May Have Conferred:

The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Owner.

D. Efforts to Minimize or Mitigate the Effects of the Violation Upon the Environment:

There are no known environmental effects as a result of the alleged violations.

E. History of Previous Violations:

The Owner/Operator does not have a history of previous violations.

F. Ability to Pay:

The Owner/Operator has not alleged an inability to pay the civil penalty.

ORDER

Whereas the parties desire to resolve and settle the compliance issues cited above, the Department and the Owner consent to the terms and conditions of this Consent Order and agree as follows:

A. That, within forty-five days of the effective date of this Consent Order, the Owner shall pay to the Department a civil penalty in the amount of Three Thousand Dollars for the violations cited herein. Failure to pay the civil penalty within forty-five days of the effective date of this Consent Order shall constitute cause for the Department to file a civil action in the Circuit Court of Montgomery County, Alabama. Payment shall be made by Cashier's Check or Money Order, payable to the Alabama Department of Environmental Management, and addressed as follows:

**Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463**

B. The parties agree that, if the violations cited above are corrected on or before the effective date of this Consent Order, the owner shall execute and file with the Department the attached "Certification of Compliance" indicating the upgrade(s) performed on the UST system and the dates such upgrade(s) were completed. The "Certification of Compliance" will be subject to verification, and the Department may proceed with additional enforcement actions and the assessment of enhanced civil penalties if the cited violations have not been corrected.

C. The parties agree that, if the violations cited above have not been corrected as of the effective date of this Consent Order, the owner immediately shall discontinue use of the substandard UST system in accordance with ADEM Admin. Code r. 335-6-15-.33 ("Temporary Closure"), provide notification of temporary closure to the Department, and remain temporarily closed until such time as the violations are corrected pursuant to sub-paragraph (1) below or the UST system is permanently closed:

(1) If the violations cited herein are corrected, the owner may reactivate the system upon executing and filing with the Department the attached "Certification of Compliance." The "Certification of Compliance" will be subject to verification, and the Department may proceed with additional enforcement actions and the assessment of enhanced civil penalties if the cited violations are not corrected.

D. That, immediately upon compliance with the requirements of this Consent Order, the Owner shall complete, execute and submit to the Department a copy of the attached "Certification of Compliance."

E. That, in the event the Owner fails to comply with any of the requirements of this Consent Order within the times provided, the Owner immediately shall discontinue use of the UST system in accordance with ADEM Admin. Code r. 335-6-15-.33 ("Temporary Closure"), provide notification of temporary closure to the Department, and remain temporarily closed until such time the violations are corrected or the UST system is permanently removed from service pursuant to ADEM Admin. Code r. 335-6-15-.34.

F. That the Owner agrees that it shall otherwise comply with all applicable requirements for each UST and shall continuously remain in compliance therewith each and every day thereafter until such time the UST is permanently removed from service pursuant to ADEM Admin. Code r. 335-6-15-.34.

G. That this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented and to legally bind such party.

H. That, subject to the terms contained herein and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations alleged in this Consent Order.

I. That the Owner is not relieved from any liability upon the failure to comply with any provision of the Consent Order.

J. That, for purposes of this Consent Order only, the Owner agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. The Owner also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Owner shall be limited to the defenses of compliance with this Agreement, *Force Majeure*, and physical impossibility.

K. The Department and the Owner agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future


violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Owner shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such actions address new matters not raised in this Consent Order.

L. That this Consent Order shall not affect the Owner's obligation to comply with any Federal, State, or local laws or regulations.

M. That, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

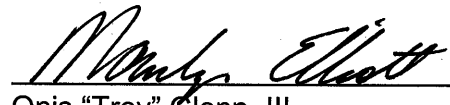
N. That any modifications of this Consent Order must be agreed to in writing signed by both parties.

O. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Owner does hereby waive any hearing on the terms and conditions of same.


(Signature)
Keith Cahela
(Please Print Name and Title of Authorized Officer)

Keith Cahela

Dated: 7-16-08


Onis "Trey" Glenn, III,
Director

Dated: 9.2.2008

ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

In The Matter Of:)

Keith Cahela)
Mt. Vernon Grocery)
UST Facility ID No. 11647-095-005721)
Boaz, Marshall County, Alabama)

CONSENT ORDER

No. 08-199-CGW

CERTIFICATION OF COMPLIANCE

I certify under penalty of law that the UST violations cited in this Consent Order have been corrected and the actions identified below were completed on the dates indicated:



Release Detection.

UST system has been equipped with an approved method of release detection, in accordance with ADEM Administrative Code r. 335-6-15-.14.

Date Completed: _____



Notification of Release Detection.

A description of the type of release detection method or methods has been submitted to the Department, in accordance with ADEM Administrative Code r. 335-6-15-.14(5).

Date Completed: _____



Automatic Line Leak Detectors.

Operation of automatic line leak detectors have been tested in accordance with the manufacturer's requirements, and results submitted to ADEM, in accordance with ADEM Admin. Code r. 335-6-15-.18(a).

Date Completed: _____

(Signature)

(Please Print Name and Title of Authorized Officer)

Keith Cahela

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U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

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OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

C.O.
 Postmark
 Here

9/2
 L.D.

Sent To: Keith Cahela - Mt. Vernon Gld.
 Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Keith Cahela
 100 Rogers Avenue
 Boaz, Al. 35957

2. Article Number

(Transfer from service label)

7007 0710 0001 6203 7144

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Keith Cahela ☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

9-4-8

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes