

ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

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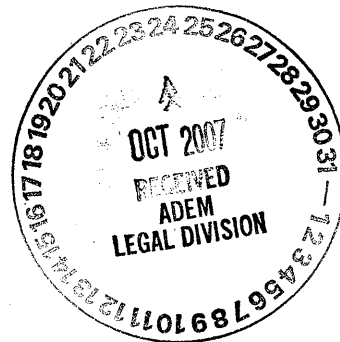
BOB RILEY
GOVERNOR

October 22, 2007

CERTIFIED MAIL 7007 0710 0001 6198 1929
RETURN RECEIPT REQUESTED

Mr. Mike Aziz
2227 Drake Avenue, Suite 22
Huntsville, AL 35805

RE: Consent Order No. 08-013-CGW
Holmes Avenue Liberty 2000
3005 Holmes Avenue, Huntsville, Madison County, Alabama
UST Facility ID No. 21201-089-001250



Dear Mr. Aziz:

Enclosed please find Consent Order No. 08-013-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 October 17, 2007. Payment of the civil penalty in the amount of \$4000 is due on or before December 3, 2007 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.

You are required to immediately repair the cathodic protection system and submit a cathodic protection test to the Montgomery address listed above. This is required even during the temporary closure period. You are also required to pay UST regulatory fees in the amount of **\$270 by December 3, 2007.**

If you have questions or wish to discuss UST compliance issues, please contact Brent Ball at (256) 353-1713 or Lee Davis at (334) 271-7759.

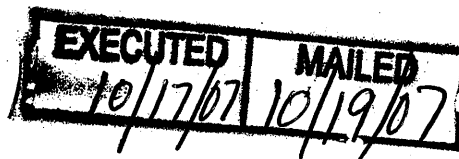
Sincerely,

James E. McIndoe, Chief
Water Division

JEM/SSM/MLD/rh

Enclosure

CC: Brent Ball, Decatur Branch, ADEM
Tom Johnston, Associate General Counsel, ADEM
Sonja Massey, Chief, Groundwater Branch, ADEM
Lee Davis, Chief, UST Compliance Unit, ADEM



Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (Fax)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (Fax)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (Fax)

Mobile - Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (Fax)

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of: _____)

Mike Aziz & Mo Kossary)

Holmes Avenue Liberty 2000)

UST Facility ID No. 21201-089-001250)

Huntsville, Madison County, Alabama)

CONSENT ORDER

No. 08-013-CGW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("ADEM") and Mike Aziz and Mo Kossary ("the owners") pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala.Code (2006 Rpl.Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala.Code (2006 Rpl.Vol.); and the ADEM Administrative Code of Regulations (ADEM Admin. Code r.) promulgated pursuant thereto.

STIPULATIONS

1. Mike Aziz and Mo Kossary are the registered owners of a regulated underground storage tank (UST) facility located at Holmes Avenue Liberty 2000, 3005 Holmes Avenue, Huntsville, Madison County, Alabama, designated as ADEM Facility I.D. Number 21201-089-001250.
2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala.Code (2006 Rpl.Vol.).
3. Pursuant to § 22-22A-4(n), Ala.Code (2006 Rpl.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 Rpl.Vol.).

CONTENTIONS

5. During an inspection of the UST facility on August 7, 2006, Department personnel documented the violations alleged herein.
6. Pursuant to ADEM Admin. Code R. 335-6-15-.10(b)(1), owners of upgraded steel USTs with cathodic protection systems must have the cathodic protection system inspected for proper operation by a qualified cathodic protection tester within 6 months of installation and at least every 3 years thereafter.
7. The owner has failed to have the cathodic protection system inspected for proper operation by a qualified cathodic protection tester every 3 years, in violation of ADEM Admin. Code R. 335-6-15-.10(b)(1).
8. 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. Owners are required to submit to the Department a description of the type of release detection method used at each UST site.
9. The owner has failed to provide a method of release detection, in violation of ADEM Admin. Code r. 335-6-15-.14.
10. A Notice of Deficiency dated August 25, 2006, was issued by the Department for the above violation.
11. The owner has refused or otherwise failed to respond to the Notice of Deficiency dated August 25, 2006, and ADEM's requests for information, in violation of ADEM Admin. Code R. 335-6-15-.13.
12. Pursuant to ADEM Admin. Code R. 335-6-15-.42, owners of underground storage tanks shall pay an Underground Storage Tank Regulation Fee of \$30 per regulated tank per year.
13. The owner has failed to pay Underground Storage Tank Regulation Fees for 2005, 2006 and 2007, and is now delinquent in the amount of \$270, in violation of ADEM Admin. Code R. 335-6-15-.42.

14. The violations cited above are continuing violations, and each day such violation continues constitutes a separate violation pursuant to §22-22-5(18)(c), Ala.Code (2006 Rpl.Vol.).

15. Pursuant to §22-22A-5(18)(c) Ala.Code (2006 Rpl.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.

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

(a) Seriousness of the Violation:

The Owner did not ensure that Corrosion Protection and Leak Detection requirements were fully implemented and/or maintained. There is no evidence that the noted violations were a threat to the health or safety of the public.

(b) Standard of Care:

The Owner 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 does not have a history of previous violations.

(f) Ability to Pay:

The Permittee has not alleged an inability to pay the civil penalty.

(g) Other Factors:

It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

17. The owner neither admits nor denies the allegations contained in this Consent Order. However, in an effort to cooperate with the Department and to resolve the alleged violations, the owner consents to this Consent Order and agrees to abide by the terms herein.

18. The Department agrees to this Consent Order upon a determination that the terms are in the best interests of the citizens of Alabama in resolving the allegations contained herein without the unwarranted expenditure of State resources in further enforcement actions.

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 (45) days of the effective date of this Consent Order, the Owner shall pay to the Department a civil penalty in the amount of Four Thousand Dollars (\$4,000.00) as settlement of the violations alleged herein. Failure to pay the civil penalty within forty-five days of the effective date of this Consent Order may result in the Department filing 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. 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. 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 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.

E. 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.

F. 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.

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

H. 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.

I. 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

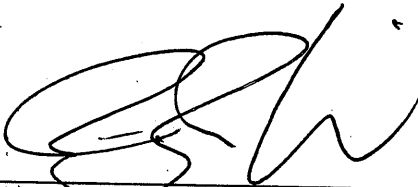
future orders, litigation or enforcement action based on the issuance of this Consent Order if such actions address new matters not raised in this Consent Order.

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

K. 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.

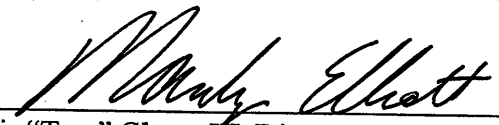
L. That any modifications of this Consent Order must be agreed to in writing signed by both parties.

M. 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)
Mike Aziz
(Please Print Name and Title of Authorized Officer)

Mike Aziz / Mo Kossary

Dated: 7-26-07


Onis "Trey" Glenn, III, Director
Alabama Department of
Environmental Management

Dated: 10-17-07

ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

In The Matter Of: _____)
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_____)
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_____)
_____)

Mike Aziz & Mo Kossary
Holmes Avenue Liberty 2000
UST Facility ID No. 21201-089-001250
Huntsville, Madison County, Alabama

CONSENT ORDER

No. 08-013-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 (check all that apply):



Corrosion Protection

UST corrosion protection system has been inspected and tested in accordance with ADEM Administrative Code r. 335-6-15-.10. CP test results have been submitted to ADEM.

Date Completed: _____



UST Regulatory Fees

All delinquent UST Regulatory Fees cited in this Consent Order have been paid in full. Payment was submitted to ADEM on the date indicated.

Date Completed: _____

DATED this _____ day of _____, 2007.

(Signature)

(Please Print Name and Title of Authorized Officer)

Mike Aziz / Mo Kossary