

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

December 9, 2011

CERTIFIED MAIL 91 7108 2133 3935 0331 8431

Mr. Neil Buzzerd
Buzzerd Enterprises, Inc.
PO Box 208
Uniontown, Alabama 36786

RE: Consent Order No. 12-039-CUST
Buzzerd Enterprises, Inc. (Best Mart)
Highway 80 & Broadway Avenue
Uniontown, Perry County, Alabama
UST Facility ID No. 22096-105-004542

Dear Mr. Buzzerd:

Enclosed please find Consent Order No. 12-039-CUST, 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 **December 9, 2011**. **Payment of the civil penalty in the amount of \$1,000 is due on or before January 23, 2012** 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.

This Consent Order requires you to submit an updated notification form (enclosed).

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: 12-039-CUST & 279

C: Wm. Gerald Hardy, Chief, Land Division
Sonja Massey, Chief, Groundwater Branch, ADEM
Todd Carter, Associate General Counsel, ADEM
Lee Davis, Chief, UST Compliance Section, 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:

Buzzerd Enterprises, Inc.
Best Mart
UST Facility ID No. 22096-105-004542
Union Town, Perry County, Alabama

CONSENT ORDER

No. 12-039-CUST

PREAMBLE

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 (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. Buzzerd Enterprises, Inc. (hereinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at Best Mart, Highway 80 & Broadway Avenue, Uniontown, Perry County, Alabama, designated as ADEM Facility I.D. Number 22096-105-004542.

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.).

5. Based upon an inspection of the UST facility 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. Owners

are required to submit to the Department a description of the type of release detection method used at each UST site.

7. Pursuant to ADEM Admin. Code r. 335-6-15-.17(h), the Department has approved Statistical Inventory Reconciliation (SIR) as an accepted method of leak detection to satisfy the leak detection requirements of ADEM Admin. Code r. 335-6-15-.14. The Owner uses SIR as the primary method of leak detection.

8. Pursuant to ADEM Admin. Code r. 335-6-15-.13(a)(6), the owners of UST systems must submit annual summary of test results no later than January 31 of each year for any approved method of leak detection under Rule 335-6-15-.17(h). This includes owners using SIR as a primary method of leak detection. The Owner submitted the 2010 SIR Annual Summary Report on June 23, 2011.

9. On April 4, 2011, the Department sent a Notice of Delinquency (NOD) to the Owner requesting that he submits a 2010 SIR Annual Summary Report within thirty days. The Department received no response from the Owner.

10. On May 17, 2011 the Department issued a Notice of Proposed Delivery Prohibition Letter to the Owner for his failure to respond to the NOD dated April 4, 2011 for the Owners failure to submit the 2010 SIR Annual Summary Report.

11. On June 23, 2011 the Owner submitted to the Department the 2010 SIR Annual Summary Report.

12. 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.

13. 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.

CONTENTIONS

14. 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. Any civil penalty assessed pursuant to this authority shall not 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 did not ensure that Leak Detection requirements were fully implemented or maintained, thereby undermining preventive measures designed to facilitate a quick response in the event of a release. 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 have a history of previous violations.

(f) Ability to Pay:

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

(g) Other Factors: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$1,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UST facilities, as follows (see attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Owner failed to file 2010 Annual SIR Summary Report;	\$0 - \$25,000

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 \$1,000.00 for the violations cited herein. Failure to pay the civil penalty within forty-five days of the effective date of this Administrative 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. That, within fourteen days of the issuance of this Administrative Order, the Owner shall submit an updated ADEM Notification for Underground Storage Tanks (ADEM Form 279) for the above referenced UST facility.

C. That the Owner otherwise shall 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.

D. 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.

E. 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.

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

G. 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

-5-

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.

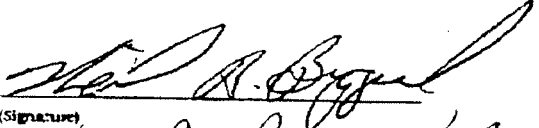
H. The Department and the Owner agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed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

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

J. 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.

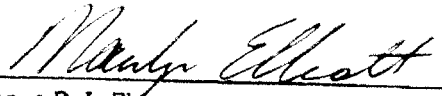
K. That any modifications of this Consent Order must be agreed to in writing signed by both parties.

L. 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)
Neil A. Buzzard
(Please Print Name and Title of Authorized Officer)

Buzzard Enterprises, Inc.

Dated: 10-20-11


Lance R. LeFleur,
Director

Dated: 12.9.11

ATTACHMENT A

Penalty Synopsis

Buzzerd Enterprises
Route 2 Box 180
Uniontown, AL 36786
Best Mart
Hwy. 80 & Broadway
22096-105-004542

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-6-15-.13(a)6. states owners and operators must submit annual summary of test results no later than January 31st of each year for any approved method of leak detection under rule 335-6-.17(h) as required by the Department.	1	\$500	\$500	\$1,000
Totals:	1	\$500	\$500	\$1,000

Economic Benefit*: \$0
Mitigating Factors*: \$0
Ability to Pay*: \$0
Other Factors*: -\$1,000

Total Civil Penalty: \$1,000

Footnotes

* See the "Findings" of the Order for a detailed description of each violation and the penalty factors