



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

March 7, 2013

CERTIFIED MAIL 91 7199 9991 7030 3348 0220

Mr. Bang The Hoang
188 Brook Hollow Drive
Pelham, Alabama 35124

ADMINISTRATIVE ORDER

**Re: ADMINISTRATIVE ORDER NO. 13-065-UST
B & L Food Mart
1110 Old Tuscaloosa Highway
Bessemer, Jefferson County, Alabama
UST Facility ID No. 21698-073-004830**

Dear Mr. Hoang:

Enclosed please find **Administrative Order No. 13-065-UST**, which requires you to take certain actions in regard to alleged violations of the Alabama Underground Storage Tank (UST) and Wellhead Protection Act. In issuing this Order, the Department took into consideration all available information concerning these violations, including any written response or oral comments submitted on behalf of the operator/owner.

Please be advised that failure to comply with the terms of this Order can result in penalties of up to \$25,000.00 per day for each violation as well as possible criminal penalties. Pursuant to Code of Alabama 1975, §22-22A-7(c)(1), as amended, this Order may be appealed by filing a request for a hearing before the Environmental Management Commission which should comply with the requirements of ADEM Admin. Code Chapter 335-2-1. Copies of ADEM Admin. Code, Div. 2, Environmental Management Commission regulations can be viewed or downloaded from ADEM's webpage at <http://www.adem.state.al.us> or may be obtained by submitting a request in writing to ADEM – Permits and Services Division.

Please note the issuance date of March 7, 2013, 2013. **Payment of the civil penalty in the amount of \$5,000.00 is due on or before April 23, 2013** and should be submitted to the ADEM Office of General Counsel at the Above Montgomery address.



Mr. Bang The Hoang
B & L Food Mart
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Should you have any questions concerning this matter, please contact Mr. Lee Davis, Chief of the UST Compliance Section, in Montgomery at (334) 271-7759.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip D. Davis", with a horizontal line extending to the right.

Phillip D. Davis, Chief
ADEM Land Division

PDD/SSM/MLD/ATC/rh

Enclosure

cc: Sonja M. Massey, Chief
ADEM Groundwater Branch, Land Division

ADEM Office of General Counsel

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)

Bang The Hoang)

B & L Food Mart)

UST Facility ID No. 21698-073-004830)

Bessemer, Jefferson County, Alabama)

ADMINISTRATIVE ORDER

No. 13-065-UST

FINDINGS

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:

1. Bang The Hoang (hereinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at B & L Food Mart, 1110 Old Tuscaloosa Highway, Bessemer, Jefferson County, Alabama, designated as ADEM Facility I.D. Number 21698-073-004830.

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 a review of facility records, the Department has documented the violations alleged herein.

6. 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.

7. Pursuant to ADEM Admin. Code R. 335-6-15-.13(a)6., as a condition of SIR approval, the Department requires UST facilities to submit an annual SIR report by January 31st of each year.

8. The Owner has failed to submit a SIR report since 2007, in violation of ADEM Admin. Code R. 335-6-15-.13(a)6.

9. On March 14, 2012, upon the Owner's failure to submit a 2011 SIR report, the Department issued a Notice of Violation (NOV) requiring the Owner to submit the 2011 SIR Annual Summary Report within thirty days.

10. The Owner failed to respond to the NOV dated March 14, 2012.

11. 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/Operator did not ensure that the facility was properly providing leak detection. 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 similar 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 \$5,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UST facilities, as follows (see attachment A):

Violation Type

Penalty Range for Violation Type

Owner failed to provide method of release detection.

\$0 - \$25,000

ORDER

Based on the foregoing FINDINGS and pursuant to §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(12) and 22-22A-5(18), Ala. Code (2006 Rpl.Vol.), it is hereby ORDERED:

A. That, within forty-five days of the effective date of this Administrative Order, the Owner shall pay to the Department a civil penalty in the amount of \$5,000.00 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, should any provisions of this Administrative 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.

C. That, except as otherwise set forth herein, this Administrative Order is not and shall not be interpreted to be a permit or modification of a permit under Federal, State or local law, and shall not be construed to waive or relieve the Owner of the obligation to comply in the future with all applicable law.

D. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Owner of the violations cited herein.

E. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Owner for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this the 7th day of March, 2013.

Marilyn Elliott
Lance R. LeFleur
Director

ATTACHMENT A

Penalty Synopsis

Bang The Hoang
188 Brook Hollow Drive
Pelham, AL 35124
B&L Food Mart
1110 Old Tuscaloosa Highway
Bessemer, AL
21698-073-004830

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
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.	1	\$2,000	\$2,000	\$1,000
Totals:	1	\$2,000	\$2,000	\$1,000

Economic Benefit: \$0
Mitigating Factors: \$0
Ability to Pay: \$0
Other Factors: \$0

Total Civil Penalty: \$5,000

Footnotes

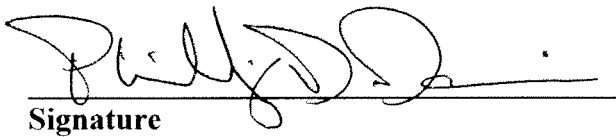
* See the "Findings" of the Order for a detailed description of each violation and the penalty factors

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Phillip D. Davis, hereby certify that I have this date served the foregoing Administrative Order on upon the person listed below by regular United States Mail, properly addressed and postage prepaid to:

**Bang The Hoang
B&L Food Mart
188 Brook Hollow Drive
Pelham, AL 35124**

Done this 7 day of March, 2013.


Signature

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Track & Confirm

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YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION
9171999991703033480220		Delivered	March 09, 2013, 2:58 pm	PELHAM, AL 35124
		Processed through USPS Sort Facility	March 09, 2013, 5:16 am	BIRMINGHAM, AL 35222

Check on Another Item

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