ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

In The Matter Of:	)	
	)	**PROPOSED**
Robertson Enterprises, Inc.	)	**ADMINISTRATIVE ORDER**
Robinson's Country Store	)	
UST Facility ID No. 17612-095-014522	)	
Guntersville, Marshall County, Alabama	)	No._____
	)	

FINDINGS

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:

1. Robertson Enterprises, Inc. (hereinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at Robinson's Country Store, 4481 Warrenton Road, Guntersville, Marshall County, Alabama, designated as ADEM Facility I.D. Number 17612-095-014522.

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 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 used this 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 has not submitted the 2010 Annual SIR Summary Report.

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

10. On May 11, 2011 the Department issued a Notice of Violation (NOV) to the Owner for his failure to submit a 2010 SIR Summary Report as requested in the April 4, 2011 NOD. The NOV gave the Owner thirty days to submit the requested information. The Department received two Notices of Temporary Closure from the Owner indicating temporary closure dates of October 31, 2010 and then October 31, 2009.

11. On June 27, 2011 the Department issued a Notice of Proposed Delivery Prohibition Letter to the Owner for his failure to submit the 2010 SIR Annual Summary Report requested by the Department. The 2011 Annual Summary SIR Report has not been received, but a Monthly SIR Report for May 2010 was submitted. The facility was not placed on the Delivery Prohibition List.

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

13. The Owner refused or otherwise failed to comply with ADEM's requests for information on several occasions and was in violation of ADEM Admin. Code r. 335-6-15-.13.

14. 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 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/Operator.

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 $2,000.00 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 submit Annual SIR Report;	$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 Rplc. 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 $2,000.00 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 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.

C. 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.

D. 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.

E. 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.

F. 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 _____ day of _____, 2011.

_____

Lance R. LeFleur
Director

ATTACHMENT A

Penalty Calculation Worksheet

Robertson Enterprises, Inc.
3171 County Hwy. 1
Oneonta, AL 35121
Robinson's Country Store
Guntersville, AL
17612-095-014522

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 that 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 335-6-15-.17(h). (2010 SIR Annual Summary Report)	1	$500	$500	$1,000
Totals:	1	$500	$500	$1,000

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

Total Civil Penalty: $2,000

Footnotes

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