



Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

FEB 10 2015

CERTIFIED MAIL 91 7199 9991 7032 3201 4714

Ms. Kinh N. Lai
26590 Main Street
Ardmore, Alabama 35739

RE: **PROPOSED CONSENT ORDER**
K Family Gas Station (Clark)
26590 Main Street (Highway 53)
Ardmore, Limestone County, Alabama
UST Facility ID No. 23905-083-015763



Dear Ms. Lai:

An inspection by ADEM has found your underground storage tank (UST) facility in violation of state and federal law, as noted in the enclosed document. The Department has determined that the alleged violations warrant the issuance of an administrative order requiring you to take actions to bring your facility into compliance.

The Department has further determined that the alleged violations are appropriate for resolution by Consent Order, a mechanism by which you agree to certain terms and conditions to resolve the violations without the need for more aggressive enforcement and/or litigation. We have enclosed two copies of a proposed Consent Order acceptable to the Department as resolution of the cited violations. This Consent Order imposes a civil penalty, requires you to submit proof of operator training and submit monthly SIR reports.

If you are agreeable to the entry of this Consent Order, please sign both copies where indicated and return them in the enclosed envelope within 10 days of receipt of this letter. Proposed Orders are subject to a 30-day public notice and comment period. If changes are made to the proposed Consent Order in response to public comments, those changes will be sent to you for your further review and signature. Upon completion of the public notice process, the Department will enter the final order, assign the "effective date," and return a signed original to you. Payment of the civil penalty will be paid in ten monthly installments of \$200.00 each. The first payment will be due on the first day of the first month following the effective date of this Order.

If you do not agree and reject this expedited enforcement approach, the Department may institute a more formal enforcement action seeking an enhanced civil penalty commensurate with the additional expenditure of agency resources, or proceed with litigation in circuit court.



If you wish to discuss this proposal, please contact us. We will be glad to schedule an opportunity for you to meet with our staff for an informal conference to discuss the alleged violations. However, you must respond to this letter within 10 days of receipt. If we do not receive a response from you within 10 days, we will assume you reject this Consent Order proposal and will refer your case for unilateral enforcement.

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

Sincerely,

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

Phillip D. Davis, Chief
ADEM Land Division

PDD/SSM/MLD/ATC:cy

Enclosures

February 9, 2015

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)
)
Kinh N. Lai)
K Family Gas Station (Clark))
UST Facility ID No. 23905-083-015763)
Ardmore, Limestone County, Alabama)

**PROPOSED
CONSENT ORDER**

No. _____

PREAMBLE

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code, as amended; the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code, as amended; 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. Kinh N. Lai (hereinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at K Family Gas Station (Clark), 26590 Main Street (Highway 53), Ardmore, Limestone County, Alabama, designated as ADEM Facility I.D. Number 23905-083-015763.
2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code, as amended.
3. Pursuant to § 22-22A-4(n), Ala. Code, as amended, 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, as amended.
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-.13 (a) 6, owners and operators must submit an annual summary of statistical inventory reconciliation (SIR) 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.

7. The Owner failed to submit annual summary of SIR test results (which is an approved method of leak detection under rule 335-6-.17 (h)), no later than January 31, 2014 in violation of ADEM Admin. Code r. 335-6-15-.13 (a) 6.

8. On March 12, 2014, the Department issued a Notice of Delinquency (NOD) requesting that the Owner provide the Department the 2013 SIR Annual Summary Report or Notification for Underground Storage Tanks Form within thirty days. The Department did not receive a response to the March 12, 2014, request for information.

9. On April 21, 2014, the Department issued a Notice of Violation (NOV) requesting that the Owner submit to the Department a 2013 Annual Summary SIR Report within thirty days. The Department did not receive a response to the NOV from the Owner.

10. On June 16, 2014, the Department issued a Notice of Proposed Delivery Prohibition Letter to the Owner for failure to respond to the March 12, 2014, NOD and the April 21, 2014, NOV. The violation that warranted delivery prohibition was failure to submit the 2013 SIR Annual Summary Report. The Owner was required to demonstrate compliance by July 15, 2014.

11. On July 24, 2014, the Owner submitted the 2013 SIR Annual Summary Report for the facility.

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

Pursuant to § 22-22A-5(18)(c), Ala. Code, as amended, 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/Deliverer 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/Deliverer does have a history of previous violations.

F. Ability to Pay:

The Owner/Deliverer 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, as amended, 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 summary of SIR test results;

\$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 after the effective date of this Consent Order, the Owner shall pay to the Department a civil penalty in the amount of \$2,000.00 for the violations cited herein. Said penalty shall be paid in ten installment of \$200.00. The first payment of \$200.00 shall be due on the first day of the first month following the effective date of this Order. Failure to pay the civil penalty 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 ninety days of the issuance of this Order, the Owner shall submit documentation to the Department of retraining of the Class A, and B operator(s) in accordance with ADEM Admin. Code r. 335-6-15-.46(6).

C. That the Owner shall submit monthly SIR reports for all active USTs by the 20th day of every month through December, 2015.

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

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)

KINH (CRODY) LAI

(Please Print Name and Title of Authorized Officer)

Kinh N. Lai

Lance R. LeFleur,
Director

Dated: 2/13/15

Dated: _____

Attachment A

**Kinh N. Lai
K Family Gas Station (Clark)
Ardmore, Limestone County**

Facility ID No. 23905-083-015763

Violation*	Number of Violations*	Seriousness of Violation*	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	
					Total of Three Factors
TOTAL PER FACTOR		\$500	\$500	\$1,000	\$2,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
Total Adjustments (+/-) <i>Enter at Right</i>	\$0

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$2,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$2,000

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.