

ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700
FAX (334) 271-7950

BOB RILEY
GOVERNOR

March 11, 2008

CERTIFIED MAIL 7007 0710 0001 6207 1384
RETURN RECEIPT REQUESTED

Mr. Preston Boutwell
P.O. Box 39
Opp, Alabama 36467

RE: Consent Order No. 08-114-CGW
Opp Exxon
100 Cummings Avenue, Covington, Alabama
UST Facility ID No. 13913-039-003025

Dear Mr. Boutwell:

Enclosed please find Consent Order No. 08-114-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 March 11, 2008. Payment of the civil penalty in the amount of **\$1000 is due on or before April 25, 2008** 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.

This order required you to maintain records of leak detection and test line leak detectors. You certified that these were completed January 17, 2008.

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

Sincerely,

Wm. Gerald Hardy, Chief
Land Division

WGH/SSM/MLD/rh

Enclosure

C: Craig Hodes, UST Compliance Unit
Mary-Frank Brown, 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:)
)

Preston Boutwell)

Opp Exxon)

UST Facility ID No. 13913-039-003025)

Opp, Covington County, Alabama)

CONSENT ORDER

No. 08-114-CGW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM") and Preston Boutwell (hereinafter "the Owner") 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.

STIPULATIONS

1. Preston Boutwell is the registered owner of a regulated underground storage tank (hereinafter "UST") facility located at Opp Exxon, 100 Cummings Avenue, Opp, Covington County, Alabama, designated as ADEM Facility I.D. Number 13913-039-003025.

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 dated September 5, 2007 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-.19(b), results of any sampling, testing, or monitoring must be maintained for at least 1 year.

7. The owner has failed to maintain the results of any sampling, testing, or monitoring for at least 1 year, in violation of ADEM Admin. Code r. 335-6-15-.19(b).

8. Pursuant to ADEM Admin. Code r. 335-6-15-.18, owners of UST systems must conduct annual tests of the operation of automatic line leak detectors in accordance with the manufacturer's requirements.

9. The owner has failed to conduct annual tests of the automatic line leak detectors, in violation of ADEM Admin. Code r. 335-6-15-.18.

10. Notice of Delinquency (NOD) dated October 16, 2007, was issued by the Department for the release detection violation.

11. Pursuant to ADEM Admin. Code r. 335-6-15-.13, owners of UST systems must cooperate fully with inspections, monitoring and testing conducted by the Department as well as requests for document submission, submission of engineering or technical data, and testing and monitoring performed by the owner at the request of the Department.

12. The Owner has refused or otherwise failed to fully comply with the NOD dated October 16, 2007, and ADEM's requests for information, in violation of ADEM Admin. Code r. 335-6-15-.13.

CONTENTIONS

13. 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 be less than \$100.00 or 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.

14. 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 leak detection record keeping requirements were fully implemented and/or maintained, thereby undermining preventive measures designed to avoid releases. 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 not have a history of previous violations.

(f) Ability to Pay:

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

15. 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.

16. 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 days of the issuance of this Consent Order, the Owner shall pay to the Department a civil penalty in the amount of One Thousand for the violations cited herein. Failure to pay the civil penalty within forty-five days after the issuance of this Consent 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, 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 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 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.

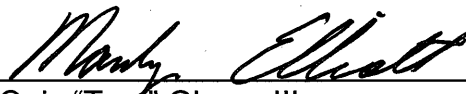
L. That any modifications of this Consent Order must be agreed to in writing signed by both parties.

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)
Preston Boutwell V-Pres.
(Please Print Name and Title of Authorized Officer)

Preston Boutwell

Dated: 1/22/08


Onis "Trey" Glenn, III
Director

Dated: 3.11.08

ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

In The Matter Of:

Preston Boutwell

Opp Exxon

UST Facility ID No. 13913-039-003025

Opp, Covington County, Alabama

CONSENT ORDER

No. _____

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:



Automatic Line Leak Detectors.

Operation of automatic line leak detectors have been tested in accordance with the manufacturer's requirements, and results submitted to ADEM, in accordance with ADEM Admin. Code r. 335-6-15-.18.

Date Completed: _____

1/17/08



Leak Detection Record Keeping.

UST system has been equipped with a method of maintaining sampling, testing, or monitoring reports, in accordance with ADEM Administrative Code r. 335-6-15-.19(b).

Date Completed: _____

10/15/07
12/3/07

DATED this 22 day of Jan, 2008.

Preston Boutwell
(Signature)
Preston Boutwell V-pres.
(Please Print Name and Title of Authorized Officer)

Preston Boutwell