

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)

Keith Mitchell d/b/a Elkwood Grocery)
UST Facility ID No. 20489-089-003469)
Limestone County, Alabama)

CONSENT ORDER

No. 99-141-CGW

FINDINGS

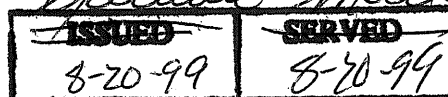
Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended; the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 through 22-36-10, Code of Alabama (1975), as amended; the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties hereto, the Alabama Department of Environmental Management (hereinafter, "the Department") makes the following FINDINGS:

1. **Keith Mitchell d/b/a Elkwood Grocery** (hereinafter, "the owner/operator"), is the owner and/or operator of an underground storage tank facility located at Elkwood Grocery, 8233 Old Railroad Bed Road, Ardmore, Alabama, designated as ADEM Facility I.D. Number 20489-089-003469.

2. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended.

3. Pursuant to § 22-22A-4(n), Code of Alabama 1975, as amended, the Alabama Department of Environmental Management is the State Environmental Control Agency for the purposes of Federal Environmental Law, including 42 U.S.C. §6991, et.seq., as amended.

4. The Alabama Department of Environmental Management is authorized to administer and enforce the provisions of the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 through 22-36-10, Code of Alabama 1975, as amended.



5. During an inspection of the UST facility on April 14, 1999, Department personnel documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code R. 335-6-15-.07, not later than December 22, 1998, all UST systems must comply with one of the following requirements: (a) New UST performance standards; (b) Upgrade requirements; or (c) Closure requirements.

7. The owner/operator has failed to comply with any of the three December 22, 1998 requirements, in violation of ADEM Admin. Code R. 335-6-15-.07.

8. Pursuant to ADEM Admin. Code R. 335-6-15-.07, owners and operators of all UST systems must install overfill prevention equipment.

9. The owner/operator has failed to install overfill prevention equipment, in violation of ADEM Admin. Code R. 335-6-15-.07.

10. The owner/operator neither admits nor denies the Findings contained in this consent order. However, in an effort to cooperate with the Department and to resolve the allegations cited above, the owner/operator consents to the terms of this Order

11. 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 alleged violations cited hereinabove.

ORDER

Based upon the foregoing FINDINGS and pursuant to §§22-22A-5(10), 22-22A-5(18), and 22-36-3, Code of Alabama (1975), as amended, and with the consent of the owner/operator, it is hereby ORDERED:

A. That there is hereby assessed a civil penalty against the owner/operator in the amount of Five Hundred Dollars (\$500.00) to be paid to the Alabama Department of Environmental Management within thirty (30) days of issuance of this Order.

B. That the owner/operator forthwith shall temporarily close the UST system in accordance with ADEM Admin. Code R. 335-6-15-.36, provide notification of temporary closure to the Department, and remain temporarily closed until such time as the system is

upgraded or permanently closed.. If the UST system is upgraded prior to December 22, 1999, then the owner/operator may reactivate the system upon notification to the Department. If the UST system has not been upgraded by December 22, 1999, then the owner/operator shall permanently close the UST system in accordance with ADEM Admin. Code R. 335-6-15-.37.

C. That the owner/operator forthwith 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.

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 of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations cited in this Order.

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

G. That for purposes of this Order only, the owner/operator 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/operator also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the owner/operator shall be limited to the defenses of Force Majeure, compliance with this Agreement and physical impossibility.

H. That this Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning the owner/operator which would constitute possible violations not addressed in this Order, or if the violations noted herein

continue, then such future violations shall be addressed in Orders or litigation initiated by the Department, or such other enforcement action as may be appropriated, and the owner/operator shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

I. That by agreement of the parties, this Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the owner/operator does hereby waive any hearing on the terms and conditions of same.

ORDERED and ISSUED this 20th day of August, 1999.

Keith Mitchell
(Signature)
Keith Mitchell Owner
(Please Print Name and Title of Authorized Officer)
Keith Mitchell

James W. Warr
for James W. Warr, Director
Alabama Department of
Environmental Management