

LANCE R. LEFLEUR  
DIRECTOR



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

June 9, 2011

**CERTIFIED MAIL 91 7108 2133 3935 0330 2454**

Mr. Kim Bearden  
168 Shiloh Ranch Road  
Rainsville, Alabama 35986

**RE: Administrative Order No. 11-092-UST  
Asbury Pure  
2005 Asbury Road  
Albertville, Marshall County, Alabama  
UST Facility ID No. 22700-095-008037**



Dear Mr. Bearden:

Enclosed please find Administrative Order No. 11-092-UST, 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.

Please note the issuance date June 9, 2011. **Payment of the civil penalty in the amount of \$6,000 is due on or before July 25, 2011** and should be submitted to the ADEM Office of General Counsel at the above Montgomery address.

Pursuant to the terms of the 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 requires you to pay delinquent UST Regulatory Fees in the amount of \$270.**

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: Sonja Massey, Chief, Groundwater Branch, ADEM  
Wm. Gerald Hardy, Chief, Land Division, ADEM  
Todd Carter, Associate General Counsel, 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**  
1204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

**Mobile-Coastal**  
1171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of: )

Kim Bearden )

Asbury Pure )

UST Facility ID No. 22700-095-008037 )

Albertville, Marshall County, Alabama )

**ADMINISTRATIVE ORDER**

**No. 11-092-UST**

**PREAMBLE**

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:

**STIPULATIONS**

1. Kim Bearden is the registered owner of a regulated underground storage tank (UST) facility located at Asbury Pure, 2005 Asbury Road, Albertville, Marshall County, Alabama, designated as ADEM Facility I.D. Number 22700-095-008037.

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 an inspection dated January 19, 2011 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-.45(3), upon implementation of delivery prohibition, it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to an underground storage tank facility that is under delivery prohibition.

7. The owner accepted delivery of a regulated substance to an underground storage tank facility that was under delivery prohibition.

8. Pursuant to ADEM Admin. Code r. 335-6-15-.42, owners of underground storage tanks shall pay an Underground Storage Tank Regulation Fee of \$30.00 per regulated tank per year.

9. The Owner has failed to pay Underground Storage Tank Regulation Fees for 2009-2011 in the amount of \$270.00, in violation of ADEM Admin. Code r. 335-6-15-.42.

10. A Notice of Delinquency (NOD) dated September 9, 2010, was issued by the Department requiring the Owner to submit to the Department a Notice of Temporary Closure form with verification that the tanks have been emptied to one inch or less residual, corrosion protection test results and 2009-2010 UST Regulatory Fees in the amount of \$180.00.

11. On October 20, 2010, upon the Owner's failure to respond to the NOD dated September 9, 2010, the Department issued a Notice of Violation (NOV) requiring the Owner to submit to the Department a Notice of Temporary Closure form with verification that the tanks have been emptied to one inch or less residual, corrosion protection test results and 2009-2010 UST Regulatory Fees in the amount of \$180.00.

12. On December 6, 2010, upon the Owner's failure to respond to the NOD dated September 9, 2010 and the NOV dated October 20, 2010, the Department issued a Notice of Proposed Delivery Prohibition requiring the Owner to submit to the Department a Notice of Temporary Closure form with verification that the tanks have been emptied to one inch or less residual, corrosion protection test results, impressed current cathodic protection system 60-day inspection log sheet and 2009-2010 UST Regulatory Fees in the amount of \$180.00.

13. On January 5, 2011, the Department placed the facility on delivery prohibition.

14. On January 19, 2011, a Department inspection revealed that the facility had received fuel on January 6, 2011 while still on delivery prohibition.

## **CONTENTIONS**

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 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.

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 not on delivery prohibition. 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 not 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 \$6,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UST facilities, as follows (see attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized delivery to a facility on delivery prohibition	\$100 - \$25,000
Failure to pay an Underground Storage Tank Regulation Fees	\$100 - \$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 Six Thousand Dollars 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 immediately upon issuance of this Administrative Order, the Owner shall pay to the Department delinquent UST fees in the amount of Two-Hundred Seventy Dollars. Payment shall be made by Cashier's Check or Money Order, payable to the Alabama Department of Environmental Management at the above address.

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 8 day of JUNE, 2011.



Lance R. LeFleur  
Director

# ATTACHMENT A

## Penalty Calculation Worksheet

Owner - Kim Bearden

Owner Address - 168 Shiloh Ranch Road

Rainville, AL 35986

Facility - Asbury Pure

22700-095-008037

Violation*	Number of Violations *	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-6-15-.45(3) states that it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to a UST facility that is under delivery prohibition.	1	\$5,000	\$0	\$0
ADEM Admin Code r. 335-6-15-.42 requires owners to pay an Underground Storage Tank Regulation Fee of \$30 per tank per year.	1	\$1,000	\$0	\$0
<b>Totals:</b>	2	\$6,000	\$0	\$0

Economic Benefit\*: \$0

Mitigating Factors\*: \$0

Ability to Pay\*: \$0

Other Factors\*: \$0

**Total Civil Penalty: \$6,000**

### Footnotes

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

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### Search Results

Label/Receipt Number: **9171 0821 3339 3503 3024 54**Service(s): **Certified Mail™**Status: **Delivered**

Your item was delivered at 1:21 pm on June 28, 2011 in RAINSVILLE, AL 35986.

### Track & Confirm

Enter Label/Receipt Number.

[Go >](#)

### Detailed Results:

- **Delivered, June 28, 2011, 1:21 pm, RAINSVILLE, AL 35986**
- **Notice Left, June 13, 2011, 1:28 pm, RAINSVILLE, AL 35986**

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Date: 06/29/2011

Valerie Jackson:

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Signature of Recipient:

Kim Bearden  
Kim Bearden

Address of Recipient:

118 Shook Ranch RD  
Rainville, AL 35986

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### Return Receipt (Electronic) Confirmation

Your delivery record is complete and will be processed shortly.

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Label/Receipt Number: **9171 0821 3339 3503 3024 54**

First Name: **Valerie**

Last Name: **Jackson**

Email Address: **vlj@adem.state.al.us**

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