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5. During an inspection of the UST facility on March 17, 1999, Department personnel documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code R. 335-6-15-.14, owners and operators of new and existing UST systems must provide a method or combination of methods of release detection.

7. The owner/operator has failed to provide a method of release detection, in violation of ADEM Admin. Code R. 335-6-15-.14.

8. Pursuant to ADEM Admin. Code R. 335-6-15-.14, owners and operators of existing UST systems must submit to the Department a description of the type of release detection method or methods to be used at each UST site.

9. The owner/operator has failed to submit to the Department a description of the type of release detection method used at each UST site, in violation of ADEM Admin. Code R. 335-6-15-.14.

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 27<sup>th</sup> day of January, 2000, 1999.

Cecil L. Allen  
(Signature)

CECIL L. ALLEN OWNER  
(Please Print Name and Title of Authorized Officer)

Cecil Allen

Date Signed: Jan 11<sup>th</sup>, 2000

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