

LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
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Alabama Department of Environmental Management  
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July 13, 2015

**CERTIFIED MAIL 91 7108 2133 3936 7155 7694**

Mr. Jonathan Bell  
M.F. Gardner Oil Company, Inc.  
Post Office Box 218  
Scottsboro, Alabama 35768

**RE: Consent Order No. 15-078-CUST**  
Gibson Downtown Service  
219 West Willow Street  
Scottsboro, Jackson County, Alabama  
UST Facility ID No. 13209-071-011023  
011023 – ORDER

Dear Mr. Bell:

Enclosed please find Consent Order No. 15-078-CUST, 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.

Pursuant to the terms of the consent order the Class A and Class B operators must be retrained and documentation must be submitted within 90 days, and the monthly SIR reports must be submitted to the Department on the 20<sup>th</sup> day of each month beginning with the August SIR report and ending with the December SIR report.

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

Sincerely,

Phillip D. Davis, Chief  
Land Division

PDD/SSM/MLD/qv

Enclosure

C: Sonja Massey, Chief, Groundwater Branch, ADEM  
Todd Carter, Associate General Counsel, 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  
3664 Dauphin Street, Suite B  
Mobile, AL 36608  
(251) 304-1176  
(251) 304-1189 (FAX)

**ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of: )

M.F. Gardner Oil Company, Inc. )

Gibson Downtown Service )

UST Facility ID No. 13209-071-011023 )

Scottsboro, Jackson County, Alabama )

**CONSENT ORDER**

**No. 15-078-CUST**

**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. M.F. Gardner Oil Company, Inc. (hereinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at Gibson Downtown Service, 219 West Willow Street, Scottsboro, Jackson County, Alabama, designated as ADEM Facility I.D. Number 13209-071-011023.

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. The Owner failed to demonstrate compliance by July 15, 2014 and the facility was placed on delivery prohibition.

12. On July 31, 2014, the Owner submitted the 2013 SIR Annual Summary Report for the facility.

13. 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.

14. 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/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 have a history of previous violations.

F. Ability to Pay:

The Owner/Operator has demonstrated 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 no civil penalty 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, within ninety days of the effective date 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).

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

C. 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.

D. 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.

E. That the Owner is not relieved from any liability upon the failure to comply with any provision of the Consent Order.

F. 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.

G. 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.

H. That this Consent Order shall not affect the Owner's obligation to comply with any Federal, State, or local laws or regulations.

I. 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.

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

K. 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.

Virginia Q. Webb  
(Signature)  
Virginia Q. Webb / owner  
(Please Print Name and Title of Authorized Officer)

M.F. Gardner Oil Company, Inc.

Dated: 6/19/15

Lance R. LeFleur  
Lance R. LeFleur,  
Director

Dated: 7.13.15



**Attachment A**

**MF Gardner Oil Co., Inc.  
Gibson Downtown Service  
Scottsboro, Jackson County**

**Facility ID No. 13209-071-011023**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>	
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	
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$500</b>	<b>\$500</b>	<b>\$1,000</b>	<b>\$2,000</b>

<b>Adjustments to Amount of Initial Penalty</b>	
<b>Mitigating Factors (-)</b>	\$0
<b>Ability to Pay (-)</b>	-\$2,000
<b>Other Factors (+/-)</b>	\$0
<b>Total Adjustments (+/-)</b> <i>Enter at Right</i>	-\$2,000

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

Footnotes

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