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

February 21, 2013

**CERTIFIED MAIL 91 7199 9991 7030 3429 5793**

Mr. Jigar Patel  
1956 J University Blvd. South  
Suite 266  
Mobile, AL 36609

**RE: Consent Order No. 13-057-CUST**  
Pick & Save Food Mart  
607 D'Olive Street  
Bay Minette, Baldwin County, Alabama  
UST Facility ID No. 23149-003-001389

Dear Mr. Patel:

Enclosed please find **Consent Order No. 13-057-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.

Please note the issuance date February 21, 2013. **Payment of the civil penalty in the amount of \$1,000 will be paid in ten monthly installments of \$100.00 each.** The first payment will be due on the first day of the first month following the effective date of this Order, 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 you have any questions, please contact Lee Davis at 334 271-7759.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip D. Davis", is written over a horizontal line.

Phillip D. Davis, Chief  
Land Division

PDD/SSM/MLD/rh

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**  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:

Vijay Patel  
Pick & Save Food Mart  
UST Facility ID No. 23149-003-001389  
Bay Minette, Baldwin County, Alabama

**CONSENT ORDER**

**No. 13-057-CUST**

**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. Vijay Patel (hereinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at Pick & Save Food Mart, 607 D'Olive Street, Bay Minette, Baldwin County, Alabama, designated as ADEM Facility I.D. Number 23149-003-001389.

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 a review of facility records, the Department has documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code R. 335-6-15-.17(h), the Department has approved Statistical Inventory Reconciliation (SIR) as an accepted method of leak detection to satisfy the leak detection requirements of ADEM Admin. Code R. 335-6-15-.14.

7. Pursuant to ADEM Admin. Code R. 335-6-15-.13(a)6., as a condition of SIR approval, the Department requires UST facilities to submit an annual SIR report by January 31<sup>st</sup> of each year.

8. The Owner has failed to submit a SIR report by January 31, 2012, in violation of ADEM Admin. Code R. 335-6-15-.13(a)6. The Owner's 2011 SIR report was received by the Department on May 22, 2012.

9. A Notice of Delinquency (NOD) dated March 8, 2012, was issued by the Department requiring the Owner to submit the 2011 SIR Annual Summary Report within thirty days.

10. On April 11, 2012, upon the Owner's failure to respond to the NOD dated March 8, 2012, the Department issued a Notice of Violation (NOV) again requiring the Owner to submit the 2011 SIR Annual Summary Report within thirty days.

11. On May 21, 2012, upon the Owner's failure to respond to the NOD dated March 8, 2012, and NOV dated April 11, 2012; the Department issued a Notice of Proposed Delivery Prohibition for failure to submit the 2011 SIR Annual Summary Report.

12. On May 22, 2012, the Department's received the 2011 Annual SIR Summary Report from the Owner.

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 (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 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 comply with the release detection reporting requirements. 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 similar 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 \$1,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UST facilities, as follows (see attachment A):

Violation Type

Penalty Range for Violation Type

Owner failed to provide method of release detection.

\$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 after the effective date of this Consent Order, the Owner shall pay to the Department a civil penalty in the amount of \$1,000.00 for the violations cited herein. Said penalty shall be paid in ten installment of \$100.00. The first payment of \$100.00 shall be due on the first day of the first month following the effective date of this Order. Failure to pay the civil penalty 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 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.

C. 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.

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

E. 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.

F. 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.

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

H. 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.

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

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.

V. C. Patel

(Signature)

Vijay Patel

(Please Print Name and Title of Authorized Officer)

Vijay Patel

Dated: 12/15/12

Mary Elliott

Lance R. LeFleur,  
Director

Dated: 2.21.13

# ATTACHMENT A

## Penalty Synopsis

**Pick & Save Food Mart**  
**607 D'Olive Street**  
**Bay Minette, AL 36507**  
Pick & Save Food Mart  
607 D'Olive Street  
Bay Minette, AL 36507  
23149-003-001389

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
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>Totals:</b>	1	\$500	\$500	\$1,000

Economic Benefit*:	\$0
Mitigating Factors:	\$0
Ability to Pay*:	\$0
Other Factors:	-\$1,000

**Total Civil Penalty: \$1,000**

### Footnotes

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