

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)

Hicks Oil Company, Inc.)

Sheltons Railroad Construction)

UST Facility - "NOT REGISTERED")

Athens, Limestone County, Alabama)

CONSENT ORDER

No. 02-170-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. **Hicks Oil Company, Inc.** (hereinafter, "the owner"), is the owner of an unregistered underground storage tank ("UST") facility located at Sheltons Railroad Construction, 23195 Pepper Road, Athens, Limestone County, Alabama.

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.

ISSUED

6-07-02

SERVED

5. During an inspection of the UST facility on November 9, 2001, Department personnel documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code R. 335-6-15-.05, all underground storage tank (UST) systems in Alabama must be registered with the Alabama Department of Environmental Management.

7. The owner has failed to register the UST system with the Department of Environmental Management, in violation of ADEM Admin. Code R. 335-6-15-.05.

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

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

10. Pursuant to ADEM Admin. Code R. 335-6-15-.10, owners of upgraded steel USTs with cathodic protection systems must have the cathodic protection system inspected for proper operation by a qualified cathodic protection tester within 6 months of installation and at least every 3 years thereafter.

11. The owner has failed to have the cathodic protection system inspected for proper operation by a qualified cathodic protection tester within 6 months of installation and at least every 3 years thereafter, in violation of ADEM Admin. Code R. 335-6-15-.10.

12. Pursuant to ADEM Admin. Code R. 335-6-15-.07, owners of all UST systems must install spill prevention equipment.

13. The owner has failed to install spill prevention equipment, in violation of ADEM Admin. Code R. 335-6-15-.07.

14. The owner 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 consents to the terms of this Consent Order.

15. 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, it is hereby ORDERED:

A. That there is hereby assessed a civil penalty against the owner for the violations cited herein in the amount of One Thousand Five Hundred Dollars (\$1,500.00) to be paid to the Alabama Department of Environmental Management within thirty (30) days of the effective date of this Consent Order.

B. That the owner immediately shall register the UST facility by filing with the Department a completed ADEM Form 279.

C. That, if the violations cited above are corrected on or before the effective date of this Consent Order, the owner shall execute and file with the Department the attached "Certification of Compliance" indicating the upgrade(s) performed on the UST system and the dates such upgrade(s) were completed. The "Certification of Compliance" will be subject to verification, and the Department may proceed with additional enforcement actions and enhanced penalties if the cited violations have not been corrected.

D. That, if the violations cited above have not been corrected as of the effective date of this Consent Order, the owner shall immediately discontinue use of the substandard UST system in accordance with ADEM Admin. Code R. 335-6-15-.36 ("Temporary Closure"), provide notification of temporary closure to the Department, and remain temporarily closed until such time as the violations are corrected pursuant to sub-paragraph (1) below or the UST system is permanently closed:

(1) If the violations cited herein are corrected, the owner may reactivate the system upon executing and filing with the Department the attached "Certification of Compliance." The "Certification of Compliance" will be subject to verification, and the Department may proceed with additional enforcement actions and enhanced penalties if the cited violations have not been corrected.

E. That the owner otherwise 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-.37.

F. 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.

G. 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 Consent Order.

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

I. 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 Force Majeure, compliance with this Agreement and physical impossibility.

J. That this Consent 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 which would constitute possible violations not addressed in this Consent 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 shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

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.

Joseph D. Hicks, Jr.
(Signature)
Joseph D. Hicks, Jr.
(Please Print Name and Title of Authorized Officer)

Hicks Oil Company, Inc.

Date: 3-26-02

Mandy Elliott
James W. Wafr. Director
**Alabama Department of
Environmental Management**

Date: 6-7-02

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CONSENT ORDER

No. _____

CERTIFICATION OF COMPLIANCE

I certify under penalty of law that the UST violations cited in this Consent Order have been corrected and the upgrades identified below were completed on the dates indicated (check all that apply):



Release Detection.

UST systems have been upgraded with an approved method of release detection in accordance with ADEM Administrative Code R. 335-6-15-.14.

Date Completed: 11-17-01



Spill Prevention.

UST systems have been upgraded with an approved method of spill prevention in accordance with ADEM Administrative Code R. 335-6-15-.07.

Date Completed: 11-17-01



Overfill Prevention.

UST systems have been upgraded with an approved method of overfill prevention in accordance with ADEM Administrative Code R. 335-6-15-.07.

Date Completed: 10-5-88

(ball float)

11-17-01

(catch bucket)



Corrosion Protection.

UST piping has been upgraded with an approved method of corrosion protection in accordance with ADEM Administrative Code R. 335-6-15-.07.

Date Completed: 10-5-88 - installation date

12-17-01 - last C.P. test

DATED this 19 day of March, 2002.

Joseph D. Hicks Jr. President
(Signature)
Joseph D. Hicks Jr. President
(Please Print Name and Title of Authorized Officer)

Hicks Oil Company, Inc.