



Alabama Department of Environmental Management  
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

July 24, 2012

**CERTIFIED MAIL 91 7108 2133 3935 0361 0085**

Mr. Navid Aziz  
Bobak, Inc.  
605 Oakwood Avenue Northwest  
Huntsville, Alabama 35811

**ADMINISTRATIVE ORDER**

**Re: ADMINISTRATIVE ORDER NO. 12-143-UST  
Scot Market #34  
1600 Jordan Lane Northwest  
Huntsville, Madison County, Alabama  
UST Facility ID No. 22183-089-010125**

Dear Mr. Aziz:

Enclosed please find Administrative Order No. 12-143-UST, which requires you to take certain actions in regard to alleged violations of the Alabama Underground Storage Tank (UST) and Wellhead Protection Act. In issuing this Order, the Department took into consideration all available information concerning these violations, including any written response or oral comments submitted on behalf of the operator/owner.

Please be advised that failure to comply with the terms of this Order can result in penalties of up to \$25,000.00 per day for each violation as well as possible criminal penalties. Pursuant to Code of Alabama 1975, §22-22A-7(c)(1), as amended, this Order may be appealed by filing a request for a hearing before the Environmental Management Commission which should comply with the requirements of ADEM Admin. Code Chapter 335-2-1. Copies of ADEM Admin. Code, Div. 2, Environmental Management Commission regulations can be viewed or downloaded from ADEM's webpage at <http://www.adem.state.al.us> or may be obtained by submitting a request in writing to ADEM – Permits and Services Division.

Please note the issuance date of July 24, 2012. **Payment of the civil penalty in the amount of \$5,000.00 is due on or before September 7, 2012** and should be submitted to the ADEM Office of General Counsel at the Above Montgomery address.

**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)



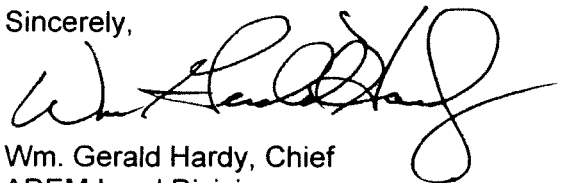
**Mobile Branch**  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

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

Mr. Navid Aziz  
Bobak, Inc.  
Page 2

Should you have any questions concerning this matter, please contact Mr. Lee Davis, Chief of the UST Compliance Section, in Montgomery at (334) 271-7759.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Gerald Hardy", written over a horizontal line.

Wm. Gerald Hardy, Chief  
ADEM Land Division

WGH/SSM/MLD/ATC/rh

Enclosure

cc: Sonja M. Massey, Chief  
ADEM Groundwater Branch, Land Division

Lee Davis, Chief  
UST Compliance Section, Groundwater Branch

ADEM Office of General Counsel

**ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of: )

**Bobak, Inc.** )

Scot Market #34 )

UST Facility ID No. 22183-089-010125 )

Huntsville, Madison County, Alabama )

**ADMINISTRATIVE ORDER**

**No. 12-143-UST**

**FINDINGS**

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rplc. 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:

1. Bobak, Inc. (hereinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at Scot Market #34, 1600 Jordan Lane NW, Huntsville, Madison County, Alabama, designated as ADEM Facility I.D. Number 22183-089-010125.

2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rplc. 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 Rplc. Vol.).

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-.14, owners of new and existing UST systems must provide a method or combination of methods of release detection. Owners are required to submit to the Department a description of the type of release detection method used at each UST site. The Owner has failed to provide a method of release detection, in violation of ADEM Admin. Code r. 335-6-15-.14.

7. 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.

8. On January 19, 2012, the Department sent a Notice of Delinquency (NOD) to the Owner requesting that he submit spill catchment basin tests, corrosion protection test results, impressed current cathodic protection system 60-day inspection log sheet, annual line tightness tests for all pressurized lines, a passing 0.2 gallon per hour leak test printout for each tank from the automatic tank gauge, annual line leak detector tests and 2012 UST Regulatory Fees in the amount of \$90.00 within thirty days. The Department did not receive a complete response to the January 19, 2012, NOD.

9. On February 23, 2012 the Department issued a Notice of Violation (NOV) to the Owner for his failure to respond to the January 19, 2012, NOD and to submit inspection log sheet for corrosion protection system, a passing 0.2 gallon per hour leak test printout for each tank from the automatic tank gauge and UST Regulatory Fees in the amount of \$90.00 as requested in the January 19, 2012, NOD. The NOV gave the Owner thirty days to submit the requested information and fees.

10. On April 16, 2012, the Department issued a Notice of Proposed Delivery Prohibition Letter to the Owner for his failure to respond to the January 19, 2012, NOD and February 23, 2012, NOV and for his failure to submit a passing 0.2 gallon per hour leak test printout for each tank from the automatic tank gauge. The Owner was required to demonstrate compliance by May 11, 2012.

11. Compliance was not achieved by May 11, 2012, therefore the facility was to be placed on the delivery prohibition list on May 16, 2012.

12. On May 14, 2012, the Owner submitted to the Department a copy of a 2012 SIR contract between the Owner and SIR Services, Inc.

13. On May 15, 2012, based on the Department receiving the 2012 SIR contract, delivery prohibition was conditionally lifted.

14. The Owner refused or otherwise failed to comply with ADEM's requests for information on several occasions and was in violation of ADEM Admin. Code r. 335-6-15-.14 by failing to provide a method of leak detection.

15. Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rplc. 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 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/Operator.

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 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 \$5,000.00 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>
Owner failed to provide method of release detection;	\$0 - \$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 Rplc. 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 \$5,000.00 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 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-.34.


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 24 day of July, 2012.

  
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Lance R. LeFleur  
Director

# ATTACHMENT A

## Penalty Synopsis

**Bobak, Inc.**  
**605 Oakwood Ave. NW**  
**Huntsville, AL 35811**  
**Scot Market #34**  
**1600 Jordan Lane NW**  
**Huntsville, Madison Co., AL**  
**22183-089-010125**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation &amp; Base Penalty*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
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.	1	\$2,000	\$2,000	\$1,000
<b>Totals:</b>	1	\$2,000	\$2,000	\$1,000

<b>Economic Benefit*:</b>	<u>\$0</u>
<b>Mitigating Factors*:</b>	<u>\$0</u>
<b>Ability to Pay*:</b>	<u>\$0</u>
<b>Other Factors*:</b>	<u>\$0</u>

**Total Civil Penalty: \$5,000**

### Footnotes

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