

X
LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

September 16, 2011

CERTIFIED MAIL 91 7108 2133 3935 0331 5409

Mr. Larry Derby
Lynchar, Inc.
6721 Macon Road
Columbus, Georgia 31907

RE: Consent Order No. 11-132-CUST
Jerry's (Previously Marathon Mart)
2812 Stadium Drive
Phenix City, Russell County, Alabama
UST Facility ID No. 21218-113-011297

Dear Mr. Derby:

Enclosed please find **Consent Order No. 11-132-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 September 16, 2011. **Payment of the civil penalty in the amount of \$5,750 is due on or before October 31, 2011** 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.

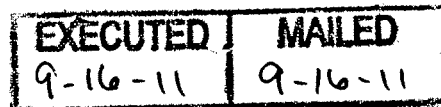
Sincerely,

Wm. Gerald Hardy, Chief
Land Division

WGH/SSM/MLD/rh

Enclosure

C: Wm. Gerald Hardy, Chief, Land Division
Sonja Massey, Chief, Groundwater Branch, ADEM
Todd Carter, Associate General Counsel, ADEM
Lee Davis, Chief, UST Compliance Section, 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:)

Lynchar, Inc.)

Jerry's (Previously Marathon Mart))

UST Facility ID No. 21218-113-011297)

Phenix City, Russell County, Alabama)

CONSENT ORDER

No. 11-132-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. Lynchar, Inc. (hereinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at Jerry's (previously Marathon Mart), 2812 Stadium Drive, Phenix City, Russell County, Alabama, designated as ADEM Facility I.D. Number 21218-113-011297.

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 an inspection dated February 25, 2011 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-.45(3), upon implementation of delivery prohibition, it shall be unlawful for any regulated substance deliverer to deliver a

regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to an underground storage tank facility that is under delivery prohibition.

7. The Owner accepted delivery of a regulated substance to an underground storage tank facility that was under delivery prohibition.

8. ADEM Administrative Code r. 335-6-15-.15(b)1.(ii), states that pressurized underground piping must have an annual line tightness test conducted in accordance with Rule 335-6-15-.18(b) or have monthly monitoring conducted in accordance with rule 335-6-15-.18(c).

9. The Owner failed to conduct annual line tightness testing in accordance with rule 335-6-15-.18(b) or have monthly monitoring conducted in accordance with Rule 335-6-15-.18(c). This is a repeat violation from the February 25, 2009 delivery prohibition.

10. ADEM Administrative Code r. 335-6-15-.18(a), states that owners of UST systems equipped with automatic line leak detectors must conduct annual tests of the operation of the automatic line leak detectors in accordance with the manufacturer's requirements.

11. The Owner failed to conduct annual tests of the operation of the automatic line leak detectors in violation of Rule 335-6-15-.18(a). This is a repeat violation from the February 25, 2009 delivery prohibition.

12. ADEM Administrative Code r. 335-6-15-.09(1)(c), states that owners of underground storage tank systems must check all catchment basins for leakage with an annual hydrostatic test and log the results.

13. The Owner failed to check all catchment basins for leakage with an annual hydrostatic test and log the results. This is a repeat violation from the February 25, 2009 delivery prohibition.

14. A Notice of Delinquency (NOD) dated October 20, 2010, was issued by the Department requiring the Owner to submit spill catchment basin tests, corrosion protection test results, 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 and annual line leak detector tests.

15. On December 3, 2010, upon the Owner's failure to respond to the NOD dated October 20, 2010, the Department issued a Notice of Violation (NOV) requiring the Owner to submit to the Department spill catchment basin tests, a corrosion protection test, annual line tightness test, a passing 0.2 gallon per hour test printout for each tank from the automatic tank gauge and leak detector tests.

16. On January 18, 2011, upon the Owner's failure to respond to the NOD dated October 20, 2010 and the NOV dated December 3, 2010, the Department issued a Notice of Proposed Delivery Prohibition for the Owner's failure to submit to the Department spill catchment basin tests, corrosion protection test results, annual line tightness tests for all pressurized tanks, annual line leak detector tests, 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 \$120.00.

17. On February 16, 2011, the Department placed the facility on delivery prohibition. The facility has previously been placed on delivery prohibition on February 25, 2009 for similar violations as outlined above.

18. On February 25, 2011, a Department inspection revealed that the facility had received fuel on February 21, 2011 and February 24, 2011 while still on delivery prohibition.

19. On March 9, 2001, the Department received spill basin tests, a corrosion protection test, line tightness tests, leak detector tests, UST Regulatory Fees and a passing 0.2 gallon per hour leak test printout for the Regular tank. The facility was conditionally taken off of the Delivery Prohibition List pending receipt of a passing 0.2 gallon per hour leak test printout for the Premium Tank.

20. On March 10, 2011, the Department received a proposal to install a cathodic protection system which resulted in the Department agreeing to drop the cathodic protection violation and approve the proposed installation of cathodic protection.

21. 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.

22. 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

23. 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 ensure that the facility was not on delivery prohibition. 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 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 \$5,750.00 is appropriate, in keeping with a penalty imposed by the Department for similar violations at other UST facilities, as follows (see attachment A):

<u>Violation Type</u>	<u>Maximum Penalty for Violation Type</u>
Acceptance of delivery of regulated substance while on delivery prohibition	\$25,000
Failure to submit annual line tightness tests	\$25,000
Failure to submit annual tests of the operation of the automatic line leak detectors	\$25,000
Failure to submit spill catchment basin tests	\$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 forty-five days of the issuance of this Consent Order, the Owner shall pay to the Department a civil penalty in the amount of \$5,750.00 for the violations cited herein. Failure to pay the civil penalty within forty-five days after the issuance of this Consent 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, 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

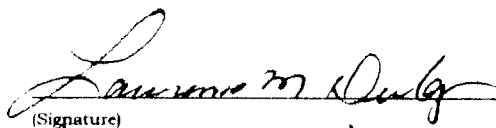
not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such actions address new matters not raised in this Consent Order.

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.

J. 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.



(Signature)

Lawrence M. Derby
(Please Print Name and Title of Authorized Officer)

Lynchar, Inc.

Dated: 7-26-11



Lance R. LeFleur,
Director

Dated: 9-16-11

ATTACHMENT A

Penalty Calculation Worksheet

Owner - Lynchar, Inc.
 6721 Macon Road
 Columbus, GA 31907
 Marathon Mart
 2812 Stadium Drive, Phenix City
 21218-113-011297

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-6-15-.45(3) states that it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to a UST facility that is under delivery prohibition.	1	\$2,500	\$2,500	\$0
2nd Delivery	1	\$250	\$250	\$0
ADEM Administrative Code Rule 335-6-15-.15(b)1.(ii), states that pressurized underground piping must have an annual line tightness test conducted in accordance with rule 335-6-15-.18(b) or have monthly monitoring conducted in accordance with rule 335-6-15-.18(c) .	1	\$1,000	\$1,000	\$2,000

ADEM Administrative Code Rule 335-6-15-.18(a), states that owners of UST systems equipped with automatic line leak detectors must conduct annual tests of the operation of the automatic line leak detectors in accordance with the manufacturer's requirements.	1	\$250	\$250	\$500
ADEM Administrative Code Rule 335-6-15-.09(1)(c), states that owners of underground storage tank systems must check all catchment basins for leakage with an annual hydrostatic test and log the results.	1	\$250	\$250	\$500
Totals:		\$4,250	\$4,250	\$3,000

Economic Benefit*:	\$0
Mitigating Factors:	\$0
Ability to Pay*:	\$0
Other Factors:	-\$5,750

Total Civil Penalty: \$5,750

Footnotes

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

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