

ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

SEARS, ROEBUCK & COMPANY,
7500 CRESTWOOD BOULEVARD
JEFFERSON COUNTY, ALABAMA

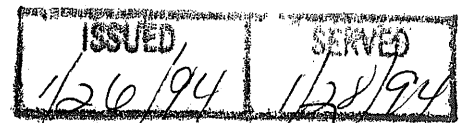
ADMINISTRATIVE ORDER
ORDER NO. 94-032-GW

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 through 22-22A-16, Code of Alabama 1975 (1990 Rplc. Vol.), the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 through 22-36-10, Code of Alabama 1975 (1990 Rplc. Vol.), the Alabama Underground and Aboveground Storage Tank Trust Fund Act, §§ 22-35-1 through 22-35-13, Code of Alabama 1975 (1990 Rplc. Vol.), and the administrative regulations promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter, "the Department") makes the following FINDINGS:

1. SEARS, ROEBUCK & COMPANY (hereinafter, "the owner/operator"), is the registered owner and operator of an underground storage tank system formerly located at 7500 Crestwood Boulevard, Birmingham, Jefferson County, Alabama (Century Plaza). The underground storage tank system is registered as ADEM Facility ID No. 14353-073-006699.

2. On or about March 26, 1992, the Department, in response to a complaint from the Jefferson County Emergency Management Agency, investigated a report of gasoline fumes in the storm



drains at Century Plaza Mall in Birmingham, and also identified gasoline fumes appearing in other storm drains in the vicinity at Eastwood Mall.

3. Investigation by Department personnel identified the Sears Century plaza facility as the source of the aforementioned release.

4. On April 1, 1992, the Department issued Emergency Administrative Order No. 92-078-GW placing the owner/operator under a schedule for investigation, confirmation and corrective actions.

5. On April 19, 1992, the Department issued the owner/operator a Notice of Violation for failure to comply with Emergency Administrative Order No. 92-078-GW in that the owner/operator failed to take adequate and timely actions to mitigate fire, explosion and vapor hazards in the area surrounding its facility.

6. Pursuant to ADEM Admin. Code R. 335-6-15-.14 and .15(b), all UST systems with pressurized piping in Alabama were required to employ an acceptable method of line leak detection no later than December 22, 1990.

7. Investigation by Department personnel has documented that the owner/operator failed to install required line leak detection by December 22, 1990, in violation of ADEM Admin. Code R. 335-6-15-.14 and .15(b), and continued to operate the UST system in violation of line leak detector requirements for over

two years, up to and including March 26, 1992, the date the subject UST release was reported.

8. Pursuant to ADEM Admin. Code R. 335-6-15-.14, all UST systems in Alabama are required to employ an acceptable method of leak detection.

9. An inspection by the Department on April 22, 1993 of the Department's records, revealed that the owner/operator had not submitted to the Department any description of the type of release detection for a waste oil tank located at its 7500 Crestwood Boulevard facility in Birmingham, Alabama, as required by ADEM Admin. Code R. 335-6-15-.14.

10. The owner\operator is the registered owner of certain underground storage tank systems, located at the following locations: 700 Montgomery Highway, Birmingham, Alabama, ID #17434-073-000628; 33 Omega Street Birmingham, Alabama ID #14352-073-010044; 1701 McFarland Boulevard Tuscaloosa, Alabama ID #14349-125-006530; 600 West Main Street, Dothan, Alabama ID #17038-069-015086; 311 Northeast Boulevard, Montgomery, Alabama ID #14351-101-001908.

11. Inspections by Department personnel on April 13, 14, and 15, 1993 revealed that the subject tanks had not been used for more than 12 months prior to these inspections.

12. ADEM Admin. Code R. 335-6-15-.36 provides that USTs may be temporarily closed for no more than twelve (12) months.

13. ADEM Admin. Code R. 335-6-15-.36 requires tanks that have been temporarily closed for more than twelve (12) months to

be permanently closed within (90) days after said twelve-month period if the tanks do not meet either new tank performance standards of ADEM Admin. Code R. 335-6-15-.06, or existing tank upgrade requirements of ADEM Admin. Code R. 335-6-15-.07.

14. Pursuant to ADEM Admin. Code R. 335-6-15-.36, the subject tanks are required to be permanently closed.

15. The inspections by the Department on April 13, 14 and 15, 1993 revealed that the subject tanks had not been permanently closed and remain in violation of ADEM Admin. Code R. 335-6-15-.36.

16. Pursuant to ADEM Admin. Code R. 335-6-15-.15 owners and/or operators of UST systems must provide leak detection for tanks as provided in ADEM Admin. Code R. 335-6-15-.15(a) and (b).

17. An inspection by the Department of department records reveals that the owner/operator has not notified the Department of the leak detection method it has employed in accordance with ADEM Admin. Code R. 335-6-15-.14 at the following locations:
700 Montgomery Highway, Birmingham, Alabama, ID #17434-073-000628; 33 Omega Street Birmingham, Alabama, ID #14352-073-010044; 1701 McFarland Boulevard Tuscaloosa, Alabama, ID #14349-125-006530; 311 Northeast Boulevard, Montgomery, Alabama ID #14351-101-001908.

18. On April 7, 1992 the owner/operator submitted to the Department a letter indicating that a line pressure test was performed on its UST system located at Century Plaza on February 28, 1992.

19. The April 7, 1992 letter further indicates that the line could not be pressurized thereby indicating the presence of a suspected release.

20. ADEM Admin. Code R. 335-6-15-.20 requires that the owner/operator notify the Department of the suspected release within 24-hours of discovery of the suspected release.

21. The owner/operator failed to notify the Department of the suspected release within 24-hours in violation of ADEM Admin. Code R. 335-6-15-.20.

22. Pursuant to ADEM Admin. Code R. 335-6-15-.22, the owner/operator must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under Rule 335-6-15-.20 within 7 days to the Department.

23. The owner/operator failed to immediately investigate and confirm all suspected releases of regulated substances in violation of ADEM Admin. Code R. 335-6-15-.22.

ORDER

Based upon the foregoing FINDINGS and pursuant to §§ 22-22A-1 to 22-22A-15, 22-36-1 to 22-36-10, and 22-35-1 to 22-35-13 Code of Alabama 1975, (1990 Rplc. Vol.), it is hereby ORDERED:

A. That there is assessed a civil penalty against the owner/operator in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) to be paid to the Alabama Department of Environmental Management within thirty (30) days of receipt of this Order.

B. That the owner/operator shall otherwise remain under the requirements of and shall comply with the provisions of ADEM Emergency Order No. 92-078-GW, issued April 1, 1992, until issued a written notice of no further action from the Department.

C. That the owner/operator shall continue under the requirements for investigation, confirmation and corrective action as provided pursuant to ADEM Admin. Code R. Chapter 335-6-15 within the time required by the Department, unless the owner/operator first obtains from the Department a written extension of applicable deadlines.

D. That the owner/operator shall continue under the investigation and corrective action requirements of ADEM Admin. Code R. Chapter 335-6-15 until released from those requirements in writing by the Department upon a showing of satisfaction of applicable corrective action limits or other demonstration as required by the Department.

E. That within ten (10) days of receipt of this Order, the owner/operator shall provide to the Department written notice of its intent to permanently close the underground storage tank systems, identified in paragraph 10 above, as required by ADEM Admin. Code R. 335-6-15-.37(1).

F. That within sixty (60) days of receipt of this Order, the owner/operator shall permanently close the underground storage tank systems identified in paragraph 10 in accordance with ADEM Admin. Code R. 335-6-15-.37 through .40, including the

performance of a site closure assessment as required by ADEM Admin. Code R. 335-6-15-.38.

G. That within 45 days of initiating closure, the owner/operator shall submit to the Department a report of the assessment findings required by ADEM Admin. Code R. 335-6-15-.38.

H. That in the event contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered in the course of closure, the owner/operator shall begin investigative and corrective action in accordance with ADEM Admin. Code Rules 335-6-15-.24 through 335-6-15-.34.

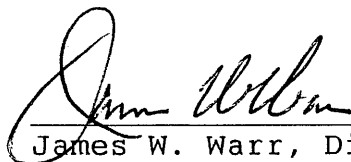
I. That the owner/operator shall forthwith comply with the requirements of ADEM Admin. Code R. 335-6-15-.14 and .17.

J. That the owner/operator forthwith shall comply with all other applicable underground storage tank requirements, and shall continuously remain in compliance therewith each and every day thereafter until formal closure of the underground storage tank system pursuant to ADEM Admin. Code R. 335-6-15-.37.

K. That the issuance of this Order does not preclude the Department from seeking civil penalties, criminal prosecution, or other appropriate sanctions or relief against the owner/operator for the violations cited herein.

L. That failure to comply with the provisions of this Order shall constitute cause for commencement of legal action by the Department against the owner/operator for recovery of civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 26th day of January, 1994.



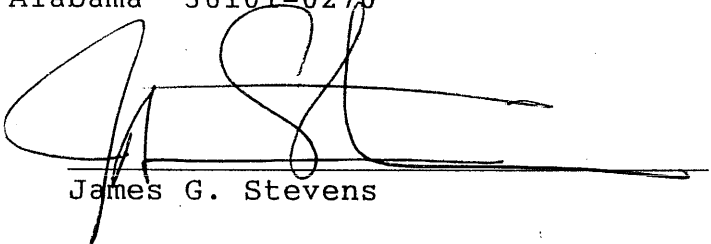
James W. Warr, Director
Alabama Department of
Environmental Management
1751 Cong. W.L. Dickinson Drive
Montgomery, Alabama 36130
(205) 271-7855

CERTIFICATE OF SERVICE

I, James G. Stevens, hereby certify that I have this date served Administrative Order No. 94-032-GW upon Sears, Roebuck & Company by sending the same, postage paid, through the U.S. Mail, as Certified Mail (No. P-227 749 655), with instructions to forward and return receipt requested to:

Mr. Robert Huffaker
Attorney for
SEARS, ROEBUCK & COMPANY
Ruston, Stakley, Johnston & Garrett
184 Commerce Street
PO Box 270
Montgomery, Alabama 36101-0270

Dated: January 26, 1994



James G. Stevens