



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

September 3, 2015

CERTIFIED MAIL NO: 91 7199 9991 7030 3447 3306
RETURN RECEIPT REQUESTED

MR TERRY L HURLBURT
SENIOR VP OPERATIONS
ENTERPRISE REFINED PRODUCTS COMPANY LLC
PO BOX 4324
HOUSTON TX 77210

RE: Consent Order No. 15-094-CAP

Dear Mr. Hurlburt:

Please find enclosed ADEM Consent Order No. 15-094-CAP which requires Enterprise Refined Products Company, LLC to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of Enterprise Refined Products and the Department. Please refer to Order Item A that requires the submittal of a monetary penalty. This penalty should be received by the Department no later than forty-five (45) days from the date of this letter.

If you have any questions concerning this matter, please contact Jennifer Knight at (334) 271-7701 in Montgomery.

Sincerely,

A handwritten signature in dark ink, appearing to be "RWG".

Ronald W. Gore, Chief
Air Division

RWG/jlk

Enclosure

cc: Tom Johnston, Office of General Counsel



**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Enterprise Refined Products Company, LLC)

Boligee, Greene County, Alabama)

Air Facility ID No. 405-0015)

CONSENT ORDER NO. **15-094-CAP**

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and Enterprise Refined Products Company, LLC (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates the Bulk Gasoline Terminal (ADEM Air Facility ID No. 405-0015) (hereinafter, the “Facility”) located in Boligee, Greene County, Alabama.

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

3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. On June 21, 2010, the Department issued Synthetic Operating Permit No. 405-0015-X001 (hereinafter, the "Permit") to the Permittee authorizing operation of the Facility, subject to certain conditions and requirements.

5. Permit Proviso No. 23 states that "The facility shall not allow the loading of gasoline into tank trucks or trailers unless the tank truck and trailers are vapor-tight and have visibly attached a valid ADEM Air Sticker or Jefferson County Department of Health Air Sticker."

DEPARTMENT'S CONTENTIONS

6. On August 11, 2014, the Department requested from the Permittee copies of all bills of lading (BOL) for tank trucks that loaded gasoline at the Facility between August 1, 2013 and July 31, 2014.

7. Upon receipt of the documents, the Department reviewed the BOLs to determine if any tank trucks had been loaded without possessing a valid ADEM or Jefferson County Department of Health (JCDH) Air Sticker.

8. The Department discovered that Permittee had allowed Parr's Incorporated (Air Facility No. 105-T001) to load gasoline a total of twelve times between August 1, 2013 and July 31, 2014, without possessing a valid Air Sticker in violation of the Permit.

9. Pursuant to Ala. Code §22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), 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 constitute a separate violation. In arriving at this civil penalty, the Department has considered the following.

A. SERIOUSNESS OF THE VIOLATION: There is no evidence to suggest that excess emissions resulted in serious harm to public health or the environment.

B. THE STANDARD OF CARE: By allowing the tank truck to load without a valid Air Sticker, Permittee did not operate in such a manner as to comply with the Permit and applicable Regulations; therefore, it did not exhibit the required standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that there was little or no significant economic benefit gained by the Permittee as a result of the violations referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts by Permittee to minimize or mitigate the effects of the violations on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued the Permittee a Notice of Violation on June 18, 2014, for loading fuel with a damaged vapor balance hose that allowed prohibited vapors to escape into the atmosphere.

F. THE ABILITY TO PAY: Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty in this matter to resolve this matter amicably, without incurring the unwarranted expense of litigation.

10. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate (see Attachment A, which is made a part of Department's contentions).

11. The Department neither admits nor denies Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the additional expenditure of State resources in prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

12. Permittee neither admits nor denies the Department's contentions. Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

13. Enterprise's Air Permit for the Boligee Terminal states that the facility shall not allow the loading of gasoline into tank truck or trailers unless the tank truck or trailers are vapor-tight and have visibly attached a valid ADEM Air Sticker or Jefferson County Department of Health Air Sticker. On June 16, 2008, Enterprise received an information request from ADEM asking for a description of how Enterprise complies with this requirement. On July 10, 2008, Enterprise (Teppco at the time) provided a response to this information request explaining the use of the Toptech electronic loading system to ensure that tank trucks loading product have valid vapor-tightness certifications and that if a vapor tightness test has expired, the driver will not be allowed to load product.

14. The Toptech system currently in use is the same as the system explained in the 2008 correspondence and drivers are not allowed to load gasoline into trailers with expired vapor tightness certifications. Enterprise now understands that in addition to maintaining annual vapor tightness certification, truck companies are responsible for submitting the certification to ADEM for evaluation in order to receive Air Stickers which must be affixed to the individual trailers. Enterprise has initiated steps with Toptech to modify the existing system to include appropriate data fields that will require drivers to provide dates for both vapor tightness certification and receipt of a valid Air Sticker. Additionally, Enterprise will require operators to bring tanks and trailers with newly issued Air Stickers to the terminal during manned hours so that the sticker can be

visually checked. After Enterprise has visually verified the sticker is valid, the tank or trailer may be loaded with gasoline until the sticker's expiration date. These system and operational modifications should improve compliance with the applicable requirements.

15. Notwithstanding, failure to confirm that a valid Air Sticker is visibly attached to a gasoline tank truck or trailer is administrative in nature and, as such, did not result in the release of excess emissions. Because this non-compliance is administrative in nature and Enterprise is investing additional funds to modify the existing Toptech system, Enterprise respectfully agrees to the penalty amount set forth below to settle the alleged violation.

ORDER

THEREFORE, Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) c., *as amended*, as well as the need for timely and effective enforcement and that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Permittee agree to enter into this ORDER with the following terms and conditions:

A. Permittee agrees to pay to the Department a civil penalty in the amount of \$16,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. Permittee agrees to comply with all requirements of ADEM Admin. Code div. 335-3 and the Permit immediately upon the effective date of this Consent Order and continuing thereafter.

D. The parties agree 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.

E. The parties agree 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 violations which are cited in this Consent Order.

F. Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Permittee also agrees that in any action brought by the Department to compel compliance with the terms

of this Agreement, Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced 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 Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and Permittee agree that this Order shall not affect Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and Permittee agree that, should any provision of this 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.

M. The Department and Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.


N. The Department and Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an

existing permit under Federal, State or local law, and shall not be construed to waive or relieve Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

ENTERPRISE REFINED PRODUCTS
COMPANY, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

Ivan W. Zirbes

(Printed Name)

Vice President - EHS&T

(Printed Title)
July 7, 2015

Date Signed



Lance R. LeFleur

Director

09/03/15
Date Executed

Attachment A

**Enterprise Refined Products Company, LLC
Boligee, Greene County, Alabama
Air Facility ID No. 405-0015**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Allowed loading of gasoline without possession of a valid Air Sticker.	12	\$12,000	\$5,000	\$3,000	
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$12,000</i>	<i>\$5,000</i>	<i>\$3,000</i>	<i>\$20,000</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-\$4,000
Total Adjustments (+/-) <i>Enter at Right</i>	-\$4,000

Economic Benefit (+)	
Amount of Initial Penalty	\$20,000
Total Adjustments (+/-)	-\$4,000
FINAL PENALTY	\$16,000

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.