

ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700
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BOB RILEY
GOVERNOR

March 13, 2009

CERTIFIED MAIL NO: 91 7108 2133 3935 2913 1618
RETURN RECEIPT REQUESTED

MR TIM SHIRLEY
HOME OIL CO INC
5744 E HIGHWAY 84
COWARTS AL 36321

Re: Consent Order 09-057-CAP

Dear Mr. Shirley:

Please find enclosed ADEM Consent Order No. 09-057-CAP which requires Home Oil Company, Inc., 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 Home Oil Company, Inc. and the Department. Please refer to Order Items A. and B. for the dates by which the monetary penalties must be paid.

If you have any questions concerning this matter, please contact E. Spring Tate at (334) 270-5667 in Montgomery.

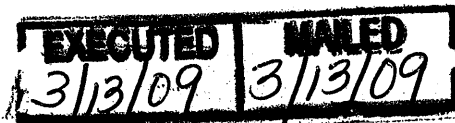
Sincerely,

Ronald W. Gore, Chief
Air Division

RWG/est

Enclosure

Cc: Oliva Rowell, Office of General Counsel



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:)

Home Oil Company, Inc.)

Company Trailer Nos. 21T, 50T & 29T)

Cowarts, Houston County, Alabama)

ADEM Permit Nos. 607-T007-X006)

607-T007-X008-X009)

ADEM Bulk Permit 607-B003-X001)

CONSENT ORDER

No. 09-057-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and Home Oil Company, Inc. (hereinafter, "Home Oil") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and 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. Home Oil is the permitted owner and/or operator of gasoline transport vessels (hereinafter, "tank trucks") and the gasoline bulk plant (hereinafter, "bulk plant") operating in Cowarts, Houston County, Alabama. The tank trucks are operating under the authority of ADEM Permit Nos. 607-T007-X006, 607-T007-X008 and 607-T007-X009 (hereinafter, the "Truck Permits") issued on January 24, 1997 (ADEM Air Sticker #00292 that expires in January 2009); September 22, 2006 (ADEM Air Sticker #00293 that expires in May 2009) and February 1, 2007 (ADEM Air Sticker #00294 that expires in January 2009). The bulk plant is operating under the authority of ADEM Permit No. 607-B003-X001 (hereinafter, the "Bulk Permit") issued on December 15, 1992.

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. ADEM Admin. Code r. 335-3-6-.05(5)(f) states:

No owner or operator of a bulk gasoline plant, tank truck, or trailer shall permit the transfer of gasoline between tank truck or trailer and stationary storage tanks unless: (f) the gasoline tank truck or trailer has a valid Department Air Sticker as required by Rule 335-3-6-.20(4) attached and visibly displayed.

5. ADEM Admin. Code r. 335-3-6-.20(3)(b) and (c) state:

After October 1, 1991, no person shall allow a gasoline tank truck subject to this Rule to be filled or emptied unless the gasoline tank truck has: (b) a valid Department Air Sticker attached and visibly displayed; or, (c) a valid Jefferson County Department of Health Air Sticker attached and visibly displayed.

6. On August 14, 2008, the Department received from Home Oil faxed copies of Method 27 Tests requesting renewal Air Stickers. The Method 27 Tests were conducted on December 7, 2007 (X006); April 16, 2008 (X008) and December 7, 2007 (X009), but were not submitted to the Department for processing. Home Oil had allowed the previous Air Stickers to expire on January 31, 2008 (X006); May 31, 2008 (X008) and January 31, 2008 (X009).

7. On August 29, 2008, the Department issued a Notice of Violation (NOV) to Home Oil for allowing gasoline tank trucks to be filled or emptied without the gasoline tank trucks having valid Department Air Stickers attached and visibly displayed, in violation of ADEM Admin Code r. 335-3-6-.20(3)(b)(c).

8. On September 4, 2008, Home Oil submitted a response to the NOV stating that Method 27 Tests were not submitted to the Department due to administrative changes effective the first of the year and that this process was overlooked. Additionally, Home Oil indicated that since receiving the NOV, it has implemented a reminder calendaring system so that the Method 27 Test will be sent to the Department as soon as the test is completed.

9. On October 3, 2008, the Department received via facsimile from Home Oil records of gasoline deliveries made to the bulk plant in Cowarts, between February 1, 2008 and August 14, 2008. Further review of the records by the Department indicated that the Air Stickers on the three tank trucks used to make these deliveries were expired, in violation of Bulk Permit Proviso No. 9.

10. Home Oil consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

11. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c. (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. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Home Oil allowed its tank trucks to be loaded/unloaded without having valid Department Air Stickers and failed to obtain new Air Stickers until August 15, 2008. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: By not operating the tank truck in such a manner as to comply with the Permit, Home Oil did not exhibit a standard of care commensurate with Department rules and regulations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Home Oil likely derived little, if any, economic benefit from its non-compliance and delayed compliance.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts made by Home Oil to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: There is no history of prior enforcement actions for similar violations against Home Oil by the Department.

F. THE ABILITY TO PAY: Home Oil 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 it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, Home Oil, 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. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Home Oil agree to enter into this ORDER with the following terms and conditions:

A. Home Oil' shall pay to the Department a civil penalty in the amount of \$1,750.00 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. Home Oil 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. Home Oil shall submit a plan to the Department detailing how it will ensure that the Air Sticker is kept current, not later than forty-five days from the effective date of this Consent Order.

D. Home Oil shall comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-6-.20 immediately upon the effective date of this Consent Order and continuing each and every day thereafter.

E. 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.

F. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, the parties agree that this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

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

H. For purposes of this Consent Order only, Home Oil 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. Home Oil also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Home Oil 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 Home Oil, 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 Home Oil) 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 Home Oil, 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.

I. The Department and Home Oil 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 Home Oil 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.

J. The Department and Home Oil 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 Home Oil does hereby waive any hearing on the terms and conditions of same.

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

L. The Department and Home Oil 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.

M. The Department and Home Oil 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.

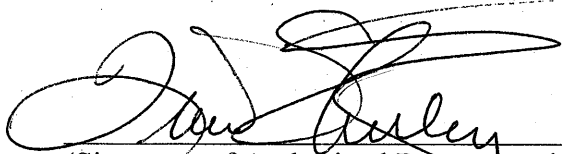
N. The Department and Home Oil agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The Department and Home Oil 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 Home Oil of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

HOME OIL COMPANY, INC.

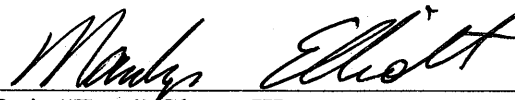
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

Tim Shirley
(Printed Name)

PRESIDENT
(Printed Title)

Date Signed: 1/20/09


Onis "Trey" Glenn, III
Director

Date Executed: March 13, 2009