

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )
Turner Oil Company, Inc., )
Wetumpka, Elmore County, Alabama )
ADEM Facility No. 205-G005 )
ADEM Facility No. 205-B001 )
ADEM Facility No. 205-T006 )

CONSENT ORDER NO. \_\_\_\_\_

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and Turner Oil Company, Inc. (hereinafter, "Turner Oil") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-17 (2015 Rplc. Vol.), and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2015 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Turner Oil is the permitted owner and/or operator of the underground gasoline storage tanks located at Toulouse Chevron (hereinafter, the "facility") in Wetumpka, Elmore County, Alabama. The facility is operating under the authority of ADEM Permit No. 205-G005 issued on May 21, 1992. Said permit authorizes the operation of a Gasoline Dispensing Facility, subject to certain limitations and conditions. In addition, Turner Oil is the permitted owner and/or operator of a bulk gasoline plant (hereinafter, "Bulk Plant") located in Wetumpka, Elmore County, Alabama, operating under the authority of ADEM Air Permit No. 205-B001, issued on September 30, 1992. Said permit authorizes the operation of a Bulk Plant, subject to certain limitations and conditions.

Furthermore, Turner Oil is the permitted owner and/or operator of gasoline transport vessels 0041 and M-1 (hereinafter, "Tank Trucks") that it operates in and from Wetumpka, Elmore County, Alabama. Turner Oil operates Tank Trucks 0041 and M-1 pursuant to the authority of ADEM Air Permit No. 205-T006-X001, X002 (ADEM Air Stickers #00050 and #00028) issued on March 9, 2018.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-17 (2015 Rplc. Vol.).

3. Pursuant to Ala. Code §22-22A-4(n) (2015 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 (2015 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-6-.07 (3) states:

(3) That no owner or operator may transfer, cause, or allow the transfer of gasoline from any gasoline tank truck into any stationary storage tank subject to this rule, unless the tank is equipped with a submerged fill pipe and the vapors displaced from the storage tank during filling are processed by a vapor control system.

5. ADEM Admin. Code r. 335-3-6-.07 (4)(a) states:

(4)(a) The vapor control system required of this rule shall include a vapor balance system (Stage I) between the stationary storage tank and the gasoline tank truck and a system that will ensure the vapor line is connected before gasoline can be transferred into the tank.

6. ADEM Admin. Code r. 335-3-6-.07 (5)(a) states:

(5)(a) Each owner or operator of a gasoline dispensing facility subject to this rule shall not permit the transfer of gasoline between a gasoline tank truck and a stationary storage tank unless the gasoline tank truck complies with rule 335-3-6-.20 and the vapor control

system is connected and operating in accordance with paragraph (4) of this rule.

*DEPARTMENT'S CONTENTIONS*

7. On October 25, 2018, Department personnel conducted an unannounced inspection of the facility located in Wetumpka, Alabama. During the inspection, it appeared that the vapor balance system had not been utilized, as evidenced by caps propping open the poppet valves of the regular and midgrade gasoline storage tanks, allowing vapors to freely vent.

8. On January 2, 2019, the Department issued a Notice of Violation (NOV) to Turner Oil requesting that it submit a response detailing the efforts that would be made to correct the aforementioned problems.

9. On February 7, 2019, the Department received a response to the NOV from Turner Oil that included the following information:

a) Mr. Dean Mack stated that he was unclear as to why the driver bypassed the vapor balance system other than it allows gasoline to drop faster from the tank truck. He also noted that Turner Oil has implemented a monthly inspection checklist.

10. Pursuant to Ala. Code §22-22A-5(18)c. (2015 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 that 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: The Department considers the alleged violations to be serious, although it is not aware of any evidence of irreparable harm to human health or the environment due to these violations.

B. THE STANDARD OF CARE: By not operating in such a manner as to comply with the Permits and the applicable Regulations, Turner Oil did not exhibit the requisite standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Turner Oil likely did not receive any significant economic benefit from its lack of 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 Turner Oil to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: Turner Oil has a prior history of similar enforcement actions with the Department.

a) On June 30, 2015, the Department conducted an unannounced inspection of the facility, located in Wetumpka, Alabama. During the inspection, it was noted that the poppet valve was propped open using a vapor recovery cap, and both the cap and poppet valve were heavily corroded. As a result, vapors were freely venting into the atmosphere. Turner Oil was informed that delivering gasoline to Stage I gasoline dispensing facilities without utilizing the vapor recovery system is a violation of ADEM's rules and regulations.

b) On July 16, 2015, the Department issued an NOV to Turner Oil requesting that it submit a response detailing the efforts that would be made to correct the aforementioned violation.

c) On August 14, 2015, the Department received a response to the NOV from Turner Oil that included the following information: Dean Mack is responsible for ensuring that the facility is in compliance with Stage I rules and regulations. Mr. Mack is also responsible for ensuring that all Turner Oil drivers are trained in the utilization of the vapor balance equipment and their responsibilities for preventing vapors from being emitted into the atmosphere. Mr. Mack indicated that inspections are conducted quarterly and that he will check once a month to ensure all rules and regulations are being followed.

d) On February 21, 2018, the Department conducted an unannounced inspection of the Bulk Plant, located in Wetumpka, Alabama. During the inspection, it was noted that the poppet valves on both vapor recovery ports of the dual point underground storage tanks were propped open with the vapor recovery caps. As a result, vapors were freely venting into the atmosphere.

e) On March 8, 2018, the Department issued a Warning Letter to Turner Oil requesting that it submit a response detailing the efforts that would be made to correct the aforementioned problems.

f) On April, 27, 2018, the Department received a response to the Warning Letter from Turner Oil that included the following information: Mr. Dean Mack stated that the poppet valves on both vapor recovery ports were left open and he has instructed all Turner Oil drivers not to leave the vapor recovery ports open while dropping gasoline to the storage tanks.

F. THE ABILITY TO PAY: Turner Oil has 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.

11. 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 hereby made a part of Department's Contentions*).

12. The Department neither admits nor denies Turner Oil'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 unwarranted expenditure of State resources in further 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.

#### *TURNER OIL'S CONTENTIONS*

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

#### *ORDER*

THEREFORE, Turner 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., *as amended*, 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 Turner Oil agree to enter into this ORDER with the following terms and conditions:

A. Turner Oil shall pay to the Department a civil penalty in the amount of \$2,000.00 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. Turner 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. Turner Oil shall comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-6-.07 (3),(4)(a) and (5)(a) immediately upon the effective date of this Consent Order and continuing each and every day 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. 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.

F. Turner Oil 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, Turner 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. Turner Oil also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Turner 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 Turner 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 Turner 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 Turner 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.

H. The Department and Turner 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 Turner 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.

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

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

K. The Department and Turner 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.

L. The Department and Turner 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.

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

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

Executed in duplicate, with each part being an original.

TURNER OIL COMPANY, INC

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Ashley Mack  
(Signature of Authorized Representative)

\_\_\_\_\_  
Lance R. LeFleur  
Director

Ashley Mack  
(Printed Name)

office manager  
(Printed Title)

Date Signed: 4/12/19

Date Executed: \_\_\_\_\_

**Attachment A**

**Turner Oil Company Inc.  
Wetumpka, Elmore County, Alabama  
Air Permit No. 205-T006**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>	
Bypassing vapor balance system by wedging cap into poppet valve during gasoline delivery	2	\$1000	\$1500	\$500	<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$1,000</b>	<b>\$1,500</b>	<b>\$500</b>	<b>\$3,000</b>

<b>Adjustments to Amount of Initial Penalty</b>	
<b>Mitigating Factors (-)</b>	
<b>Ability to Pay (-)</b>	<b>-\$1,000.00</b>
<b>Other Factors (+/-)</b>	
<b>Total Adjustments (+/-) Enter at Right</b>	

<b>Economic Benefit (+)</b>	
<b>Amount of Initial Penalty</b>	\$3,000.00
<b>Total Adjustments (+/-)</b>	\$1,000.00
<b>FINAL PENALTY</b>	\$2,000.00

Footnotes

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