ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
Pilot Flying J	)	**CONSENT ORDER**
Mobile, Mobile County, Alabama	)	
Company Trailer No. P907 (802-T028-X005)	)	No. _____
Facility ID Nos. 503-G029 and 503-G250	)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and Pilot Flying J[1] (hereinafter, "Pilot") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 through 22-28-23, (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Pilot is the permitted owner and/or operator of underground gasoline storage tanks located at Pilot Travel Centers #302 and Pilot Travel Centers #75 in Mobile, Mobile County, Alabama. Pilot is the permitted owner and/or operator of gasoline transport vessel P907 (hereinafter, the "Tank Truck") operating in and from Mobile, Mobile County, Alabama. Pilot Travel Centers #302 is operating under the authority of ADEM Air Permit 503-G029-X001 issued on January 2, 2003 and Pilot Travel Centers #75 is operating under the authority of ADEM Air Permit 503-G250-X001 issued on February 25, 2002. The Tank Truck is operating under the authority of ADEM Air Permit 802-T028-000, issued on September 24, 2008 (2011 ADEM Air Sticker #00382) to Flying J Transportation, LLC.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala.

[1] Pilot Travel Centers, LLC and Flying J Transportation, LLC merged to form Pilot Flying J on July 1, 2010 according to correspondence filed with the Department on October 12, 2010. The correspondence also stated that Pilot Flying J, through the merged Pilot Travel Centers, LLC, "...is responsible for all compliance/enforcement issues with Flying J equipment."

Code §§22-22A-1 through 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 through 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 through 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-6-.08(5)(a) states:

> Each owner or operator of a gasoline dispensing facility subject to this Rule shall (a) 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.

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.

DEPARTMENT'S CONTENTIONS

6. On July 1, 2010, Pilot Travel Centers, LLC and Flying J Transportation, LLC completed a merger/acquisition to form Pilot Flying J.

7. On September 16, 2010, the Department received a faxed copy of a Method 27 Test requesting a renewal Air Sticker for the Tank Truck. The Method 27 Test was conducted on June 25, 2010, but was not submitted to the Department for processing. Pilot had allowed the previous Air Sticker to expire on August 31, 2009.

8. On September 28, 2010, Pilot submitted a statement to the Department stating that the Tank Truck did not operate in Alabama since the expiration date of the Air Sticker.

9. On October 12, 2010, the Department received correspondence from Pilot stating that all drivers and equipment from Pilot Travel Centers, LLC and Flying J Transportation, LLC are now part of Pilot Flying J, and Pilot is responsible for all compliance/enforcement issues with Flying J Transportation, LLC equipment.

10. On October 12, 2010, the Department received definitive information from a terminal stating that the Tank Truck loaded gasoline products at its facility a total of seven (7) times in the month of September 2010 without a valid Air Sticker. This terminal included Bills of Lading verifying the date and product loaded by the Tank Truck.

11. On November 1, 2010, the Department issued a warning letter to Pilot inquiring whether the Tank Truck had loaded at or delivered to any facilities in Alabama since the Air Sticker's expiration date of August 31, 2009.

12. On December 8, 2010, Pilot submitted a response to the warning letter stating that the Method 27 Test was not submitted to the Department because the Tank Truck was not being used in Alabama. However, the response included Shell Chemical Company, Hunt Refining Company, Pilot Travel Centers #75 and Pilot Travel Centers #302, as terminals and facilities where the Tank Truck loaded and unloaded gasoline since the expiration of the 2009 Air Sticker.

13. On December 15, 2010, the Department conducted an on-site review of the Bills of Lading located at Pilot Travel Centers #75 and #302, which indicated that the Tank Truck had conducted a total of four (4) deliveries of gasoline at Store #75 and seventeen (17) deliveries of gasoline at Store #302 in August through September of 2010 in violation of ADEM Admin. Code rs. 335-3-6-.08(5)(a) and 335-3-6-.20(3)(b) through (c).

14. 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: There is no evidence that excess emissions occurred.

B. THE STANDARD OF CARE: By not operating the tank truck in such a manner as to comply with the Permit and the applicable Regulations, Pilot did not exhibit a high standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: There is no determinable economic benefit from non-compliance in this matter.

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

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

F. THE ABILITY TO PAY: Pilot 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.

15. 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, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of Department's contentions).

16. The Department neither admits nor denies Pilot'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.

PILOT'S CONTENTIONS

17. Pilot neither admits nor denies the Department's contentions. Pilot consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. As such, this Consent Order shall not be deemed or construed at any time for any purpose by anyone (including but not limited to other parties who bring claims in any legal, administrative or other proceeding) as an admission by Pilot of liability.

ORDER

THEREFORE, Pilot, 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 Pilot agree to enter into this ORDER with the following terms and conditions:

A. Pilot agrees to pay to the Department a civil penalty in the amount of $10,000.00 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. Pilot 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. Pilot agrees to submit a plan that details how it will ensure that Air Stickers are kept current, not later than forty-five days from the effective date of this Consent Order.

D. Pilot agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code rs. 335-3-6-.08 and 335-3-6-.20.

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, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. Pilot 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, Pilot 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. Pilot also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Pilot 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 Pilot, 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 Pilot) 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 Pilot, 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 Pilot 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 Pilot 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 Pilot 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 Pilot does hereby waive any hearing on the terms and conditions of same.

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

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

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

Executed in duplicate, with each part being an original.

PILOT FLYING J

Doug Drummer
(Signature of Authorized Representative)

Doug Drummer
(Printed Name)

Manager
(Printed Title)

Date Signed: 1-31-11

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur
Director

Date Executed: _____

Attachment A

Penalty Calculation Worksheet

Pilot/Flying J
Mobile, Mobile County, Alabama
Facility No. 802-T028-X005, 503-G250-X001, 503-G029-X001

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failure to renew Air Sticker	1	$ 1,000.00	$ 500.00	
Loading tanker truck without a valid Air Sticker	7	$ 3,500.00	$ 750.00	
Unloading a tanker truck with no Air Sticker	7	$ 3,500.00	$ 750.00	
	Totals	$ 8,000.00	$ 2,000.00	

Economic Benefit		
Mitigating Factors	$	-
Ability to Pay	$	-
Other Factors		
Civil Penalty	**$**	**10,000.00**

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