

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )  
 )  
Brad Lanier Oil Company, Inc. )  
Albany, Dougherty County, Georgia )  
Company Trailer No. 3 )  
 )  
ADEM Permit No. 805-T013-X002 )

**CONSENT ORDER**  
No. 15-\_\_\_\_\_-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 Brad Lanier Oil Company, Inc. (hereinafter, “Brad Lanier”) 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. Brad Lanier is the permitted owner and/or operator of a gasoline tank truck (hereinafter, the “Tank Truck”), operating from Albany, Dougherty County, Georgia in the State of Alabama. The Tank Truck is operating in Alabama under the authority of ADEM Air Permit 805-T013-X002 (ADEM Air Sticker #338) (hereinafter, the “Permit” and/or “Air Sticker”).

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

5. On September 17, 2015, the Department received a copy of the Method 27 Test conducted on the Tank Truck on June 14, 2015. After reviewing the test, it was discovered that the previous Air Sticker had been allowed to expire on July 31, 2015. The Department contacted Brad Lanier regarding the expired sticker and was informed that the Tank Truck had been used since the expiration of the sticker.

6. On September 28, 2015, the Department issued a Notice of Violation (NOV) to Brad Lanier requesting that it submit information to the Department detailing the names and addresses of all bulk plants, gasoline terminals or refineries in Alabama where gasoline was loaded into the Tank Truck. Additionally, the Department requested copies of bills of lading for gasoline deliveries to any gasoline dispensing facility located in Alabama after July of 2015 for the Tank Truck.

7. On October 27, 2015, the Department received a response to the NOV from Brad Lanier and discovered that gasoline deliveries to two gasoline dispensing facilities, Magnolia Market in Geneva, AL and Taylor Grocery in Taylor, AL, were made with the Tank Truck not having a valid Air Sticker, in violation of ADEM Admin. Code r. 335-3-6-.20(3)(b) and (c).

8. 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, 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 the Tank Truck in such a manner as to comply with the Permits and the applicable Regulations, Brad Lanier did not exhibit the requisite 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 Brad Lanier to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: On December 17, 2010, and December 21, 2012, Brad Lanier was issued Notices of Violation for the same violations alleged herein involving the Tank Truck. The Department received a response after each of those violations from Brad Lanier stating that it overlooked submitting the tests for those years and that preventative measures were put into place to avoid reoccurrence of these violations.

F. THE ABILITY TO PAY: Brad Lanier 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 warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

9. 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).

10. The Department neither admits nor denies Brad Lanier'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.

#### ***BRAD LANIER'S CONTENTIONS***

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

**ORDER**

THEREFORE, Brad Lanier, 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 following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Brad Lanier agree to enter into this ORDER with the following terms and conditions:

A. Brad Lanier agrees to pay to the Department a civil penalty in the amount of \$3000.00 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. Brad Lanier 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. Brad Lanier agrees that it shall submit a plan to the Department, not later than forty-five days from the effective date of this Consent Order, detailing how it will ensure that the Air Sticker is to be kept current.

D. Brad Lanier agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-6-.20 and the applicable Air Permit immediately upon the effective date of this Consent Order 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, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

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

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

L. The Department and Brad Lanier 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 Brad Lanier 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.

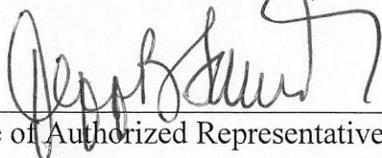
N. The Department and Brad Lanier agree that any modifications of this Order must be agreed to in writing signed by both parties.

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

Executed in duplicate, with each part being an original.

BRAD LANIER OIL COMPANY, INC.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

  
\_\_\_\_\_  
(Signature of Authorized Representative)

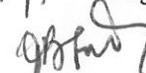
\_\_\_\_\_  
Lance R. LeFleur  
Director

JEFF B. LANIER  
\_\_\_\_\_  
(Printed Name)

V.P.  
\_\_\_\_\_  
(Printed Title)

Date Signed: 1/21/16

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

(PREVIOUSLY SIGNED AND MAILED 1<sup>st</sup> COPY UPON RECEIPT).  
THANK YOU, 

**Attachment A**

**BRAD LANIER OIL COMPANY, INC.**

**Albany, Dougherty County, Georgia**

**Air Permit # 805-T013-X002**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>	
Unloading Tanker Truck without a valid Air Sticker	38	\$500	\$500	\$2000	<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$500</b>	<b>\$500</b>	<b>\$2000</b>	<b>\$3000</b>

<b>Adjustments to Amount of Initial Penalty</b>	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
<b>Total Adjustments (+/-)</b> <i>Enter at Right</i>	

<b>Economic Benefit (+)</b>	
<b>Amount of Initial Penalty</b>	
<b>Total Adjustments (+/-)</b>	
<b>FINAL PENALTY</b>	\$3000.00

Footnotes

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