



Alabama Department of Environmental Management  
adem.alabama.gov

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Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

June 14, 2016

**CERTIFIED MAIL NO.: 91 7108 2133 3936 7155 7502**  
**RETURN RECEIPT REQUESTED**

MS BECKY PERLACKY  
KENAN TRANSPORT LLC  
4366 MOUNT PLEASANT STREET NW  
NORTH CANTON OH 44720

Dear Ms. Perlacky:

Re: Proposed Consent Order  
ADEM Air Permit 503-T030-X008, Air Sticker #180

*Enclosed  
See Attached  
Two Copies.  
Thank you  
Becky*

Please find enclosed two copies of a proposed Consent Order containing terms and conditions acceptable to the Department as resolution of the cited violations. In a phone conversation on June 9, 2016, concerns were addressed with the proposed consent order. ADEM understands Kenan Transport LLC will sign and abide by the revised Consent Order. Therefore, please execute both copies of the document where indicated and return them to the Department in the enclosed envelope within 10 days of the date of receipt of this letter.

All proposed Orders assessing a civil penalty are subject to a 30-day public notice and comment period and may be the subject of a public hearing if significant comments are received. If changes are made to the proposed Consent Order in response to public comments, those changes will be sent to you for your further review and signature. Upon completion of the public notice process, the Department will enter the final order, assign the "effective date," and return a signed original to you. Payment of civil penalties is due within 45 days of the Order's effective date.

Should you have any questions concerning this matter, please contact Ka'Laun Hambrite at (334) 271-7930.

Sincerely,

Ronald W. Gore, Chief  
Air Division

RWG/kvh

Enclosures – Proposed Consent Order (2)



ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
<b>Kenan Transport, LLC</b>	)	
Jackson, Clarke County, Alabama	)	CONSENT ORDER NO.: 16-_____CAP
ADEM Air Sticker No.: 180	)	
ADEM Air Permit No.: 503-T030-X008	)	

*PREAMBLE*

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” or “ADEM”) and Kenan Transport, LLC (hereinafter, “Kenan”) 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. Kenan is the permitted owner and/or operator of a gasoline tank truck (hereinafter, the “Tank Truck”), operating in Alabama and from North Canton, Stark County, Ohio. The Tank Truck is operating under the authority of ADEM Air Permit 503-T030-X008 (ADEM Air Sticker #180) (hereinafter, the “Permit”).
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-.07(5)(a) states:

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.

5. ADEM Admin. Code r. 335-3-6-.20(3) states:

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 a vapor collection system that meets the test requirements of subparagraph (4) (a) of this rule; and a valid Department Air Sticker attached and visibly displayed; or, a valid Jefferson County Department of Health Air Sticker attached and visibly displayed.

#### ***DEPARTMENT'S CONTENTIONS***

6. On February 11, 2016, Department personnel observed Kenan delivering gasoline to an underground gasoline storage tank at Murphy USA #5815 in Jackson, Clarke County, Alabama (hereinafter, the "Facility") without utilizing the required vapor balance system.

7. On February 25, 2016, the Department issued a Notice of Violation (NOV) to Kenan for transferring gasoline between the Tank Truck and a gasoline storage tank at the Facility without utilizing the vapor balance system, in violation of ADEM Admin Code r. 335-3-6-.07(5). Specifically, the vapor recovery hose was not removed from the Tank Truck, and the cap was used to prop open the poppet valve on the Tank Truck.

8. On March 31, 2016, the Department received Kenan's response to the NOV, which stated that the driver had connected the hoses to the vapor recovery ports.

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, 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: Kenan, during the transfer of gasoline from the Tank Truck to the gasoline storage tank, failed to process the gasoline vapors through a vapor control system and allowed gasoline vapors to be emitted into the atmosphere. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: By not operating the Tank Truck in such a manner as to comply with ADEM regulations, Kenan did not exhibit the required standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that there was no significant economic benefit gained 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 made by Kenan to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued Kenan a Consent Order in 2011 for loading gasoline into a gasoline tank truck without a valid Air Sticker. In addition, Kenan was issued a Consent Order in 2013 by the Department for delivering gasoline to a gasoline dispensing facility that was on delivery prohibition.

F. THE ABILITY TO PAY: Kenan 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 that 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.

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 Kenan'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.

#### ***KENAN'S CONTENTIONS***

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

**ORDER**

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

A. Kenan agrees to pay to the Department a civil penalty in the amount of \$3,500.00 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. Kenan 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. Kenan agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-6-.07(5) and the Permit.

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

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

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

K. The Department and Kenan 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.

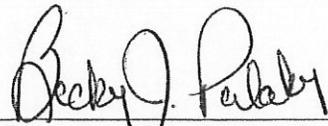
L. The Department and Kenan agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

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

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

Executed in duplicate, with each part being an original.

KENAN TRANSPORT, LLC



(Signature of Authorized Representative)

Becky J. Perlaky

(Printed Name)

EVP, Safety

(Printed Title)

Date Signed:

June 23, 2016

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur  
Director

Date Executed:

Attachment A

Kenan Transport, LLC

Jackson, Clarke County, Alabama  
 ADEM Air Permit No. 503-T030-X008/  
 Air Sticker No. 180

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Delivering gasoline without utilizing vapor recovery equipment.	1	\$3,000	\$1,000	\$1,000	
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$3,000</b>	<b>\$1,000</b>	<b>\$1,000</b>	<b>5,000</b>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-\$1,500
Total Adjustments (+/-) <i>Enter at Right</i>	-\$1,500

Economic Benefit (+)	
Amount of Initial Penalty	\$5,000
Total Adjustments (+/-)	-\$1,500
<b>FINAL PENALTY</b>	<b>\$3,500</b>

Footnotes

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