

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



IN THE MATTER OF:)
PARR'S INCORPORATED)
Demopolis, Marengo County, Alabama)
Company Trailer Nos. 9200, 9201, and 9202)
ADEM Permit Nos. 105-T001-X001,)
105-T001-X005, and 105-T001-X007)

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 Parr's Incorporated (hereinafter, "Parr's") 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. Parr's is the permitted owner and/or operator of gasoline transport vessels 9200, 9201, and 9202 (hereinafter, collectively as the "Tank Trucks" and/or individually as "Tank Truck 9200", "Tank Truck 9201", or "Tank Truck 9202") that it operates in and from Demopolis, Marengo County, Alabama. Parr's operates Tank Truck 9200 pursuant to the authority of ADEM Air Permit 105-T001-X001, issued to Parr's on September 25, 1991. Parr's operates Tank Truck 9201 pursuant to the authority of ADEM Air Permit 105-T001-X005,

issued to Parr's on July 6, 1995. Parr's operates Tank Truck 9202 pursuant to the authority of ADEM Air Permit 105-T001-X007, issued to Parr's on May 20, 2009.

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 August 28, 2014, the Department requested and received bills of lading from Enterprise (a bulk gasoline terminal) located in Boligee, Alabama, (hereinafter, the "Terminal"). Upon review of the Terminal's files, it was discovered that the Tank Trucks loaded at the Terminal with expired Air Stickers.

6. The 2013 Air Sticker #154 for Tank Truck 9200 expired on May 31, 2013, but Parr's Tank Truck 9200 loaded gasoline at the Terminal on August 9, 2013, October 10, 2013, June 10, 2014, June 18, 2014, June 24, 2014, July 24, 2014, and July 30, 2014. Parr's later renewed the Air Sticker for Tank Truck 9200 on January 27, 2015.

7. The 2013 Air Sticker #164 for Tank Truck 9201 expired on April 30, 2013, but Parr's Tank Truck 9201 loaded gasoline at the Terminal on August 9, 2013, and January 6, 2014. Parr's later renewed the Air Sticker for Tank Truck 9201 on March 17, 2014.

8. The 2013 Air Sticker #157 for Tank Truck 9202 expired on April 30, 2013, but Parr's continued to operate the Tank Truck without a valid Air Sticker. Parr's later renewed the Air Sticker for Tank Truck 9202 on March 17, 2014.

9. On January 16, 2015, the Department sent a letter of inquiry to Parr's requesting that it submit Copies of bills of lading for gasoline deliveries to any gasoline dispensing facility located in Alabama since August of 2013 for the Tank Trucks.

10. On February 17, 2015, the Department received the requested information from Parr's and discovered that multiple gasoline deliveries to various gasoline dispensing facilities in Alabama were made with the Tank Trucks not having valid Air Stickers, in violation of ADEM Admin. Code r. 335-3-6-.20(3)(b) and (c).

11. On March 9, 2015, the Department requested that Parr's submit the results of the Method 27 Tests conducted during 2013 on the Tank Trucks.

12. On March 10, 2015, the Department received from Parr's copies of the results of the Method 27 Tests conducted during 2013 on the Tank Trucks and concluded that each Tank Truck had been tested and passed. However, Parr's had not previously submitted the Method 27 Tests to the Department for Air Sticker renewals and allowed the Tank Truck Air Stickers to expire during 2013, in violation of ADEM Admin. Code r. 335-3-6-.20(3)(b) and (c) and the Permits.

13. 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 Trucks in such a manner as to comply with the Permits and the applicable Regulations, Parr's 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 Parr's to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department previously issued Parr's a Consent Order on January 11, 2013, assessing a civil penalty in the amount of \$4,000 for unloading gasoline without utilizing a vapor balance system.

F. THE ABILITY TO PAY: Parr's 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.

14. 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).

15. The Department neither admits nor denies Parr'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.

PARR'S CONTENTIONS

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

ORDER

THEREFORE, Parr's, 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 Parr's agree to enter into this ORDER with the following terms and conditions:

A. Parr's 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. Parr's 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. Parr's 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 Stickers are to be kept current.

D. Parr's agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-6-.20 and the applicable Air Permits 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. Parr's 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, Parr's 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. Parr's also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Parr's 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 Parr's, 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 Parr's) 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 Parr's, 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 Parr's 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 Parr's 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 Parr's 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 Parr's does hereby waive any hearing on the terms and conditions of same.

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

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

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

Executed in duplicate, with each part being an original.

PARR'S INCORPORATED

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

James H Parr

(Printed Name)

President

(Printed Title)

Date Signed: 5/24/15

Date Executed: _____

Attachment A

PARR'S INCORPORATED

**Demopolis, Marengo County, Alabama
Air Permit # 105-T001-X001, 105-T001-X005, 105-T001-X007**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Loading tanker truck without a valid Air Sticker	9	\$900	\$900		
Unloading tanker truck without a valid Air Sticker	>100	\$1,100	\$1,100	\$1,000	Total of Three Factors
TOTAL PER FACTOR		\$2,000	\$2,000	\$1,000	\$5,000

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

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

Footnotes

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