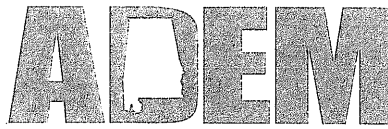


ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov
1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700
FAX (334) 271-7950

BOB RILEY
GOVERNOR

April 20, 2007

CERTIFIED MAIL NO: 7005 1820 0003 1875 9024
RETURN RECEIPT REQUESTED

Mr. Brian C. Phillips
BCP Tank Lines, Inc.
PO Box 309
Saucier, MS 39574

RE: Consent Order 07-100-CAP



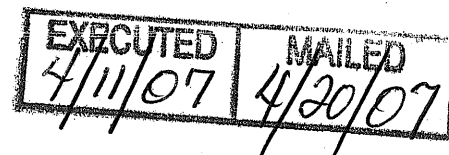
Dear Mr. Phillips:

Please find enclosed ADEM Consent Order No. 07-100-CAP which requires BCP Tank Lines, Inc. to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of BCP Tank Lines, Inc. and the Department. Please refer to Order Items A and B for the dates by which the monetary penalties must be paid. Also, Order Item C requires the submittal of "a plan". This plan should be received by the Department no later than forty-five (45) days from the date of this letter.

If you have any questions concerning this matter, please contact Donald W. Barron, II at (334) 271-7884 in Montgomery.

Sincerely,

Ronald W. Gore, Chief
Air Division



Enclosure

cc: Olivia Rowell, Office of General Counsel

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (Fax)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (Fax)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (Fax)

Mobile - Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (Fax)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

BCP Tank Lines, Inc.)

Company Trailer #147)

Saucier, Mississippi)

Facility ID No. 802-T025-X003)

CONSENT ORDER

No. 07-100-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and BCP Tank Lines, Inc. (hereinafter the "BCP Tank Lines") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (1997 Rplc. Vol. and 2005 Cum. Supp.), and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (1997 Rplc. Vol. and 2005 Cum. Supp.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. **BCP Tank Lines** is the permitted owner and/or operator of a gasoline transport vessel (hereinafter "tank truck") operating in Mobile, Mobile County, Alabama. The tank truck is operating under the authority of ADEM Air Permit 802-T025-X003 issued on April 27, 2001 (2007 ADEM Air Sticker #228).

2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (1997 Rplc. Vol. and 2005 Cum. Supp.).

3. Pursuant to § 22-22A-4(n), Ala. Code (1997 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, §§ 22-28-1 to 22-28-23, Ala. Code (1997 Rplc. Vol. and 2005 Cum. Supp.).

4. ADEM Admin. Code r. 335-3-6-.07 (4) (a) states 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 balance system (Stage I) that will ensure the vapor line is connected before gasoline can be transferred into the tank.

5. On July 12, 2006, Department personnel observed BCP Tank Lines delivering gasoline to an underground gasoline storage tank at Little K #1, located at 5561 Three Notch Road in Mobile, without utilizing the required vapor balance system.

6. BCP Tank Lines consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

7. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

8. Pursuant to Ala. Code § 22-22A-5(18)c. (2005 Cum. Supp.), 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:** During the transfer of gasoline from the tank truck into the gasoline storage tank, BCP Tank Lines failed to process the gasoline vapors through a vapor control system and allowed gasoline vapors to be emitted into the atmosphere.

B. **THE STANDARD OF CARE:** By not operating the tank truck in such a manner as to comply with its permit, BCP Tank Lines did not exhibit a high standard of care.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:**
While there may have been some economic benefit, the Department is unable to quantify the benefit.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Department is unaware of any efforts made by BCP Tank Lines to minimize or mitigate.

E. **HISTORY OF PREVIOUS VIOLATIONS:** BCP Tank Lines has not been issued any enforcement actions by the Department.

F. **THE ABILITY TO PAY:** BCP Tank Lines 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.

ORDER

THEREFORE, BCP Tank Lines, 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. (2005 Cum. Supp.), 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 BCP Tank Lines agree to enter into this ORDER with the following terms and conditions:

A. BCP Tank Lines agrees to pay to the Department a civil penalty in the amount of \$4,000.00 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. BCP Tank Lines 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. BCP Tank Lines agrees to submit a plan that details how it will help ensure that the vapor balance system is utilized during the transfer of gasoline from a tank truck into a gasoline storage tank not later than forty-five days from the effective date of this Consent Order.

D. BCP Tank Lines agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-6-.07 and ADEM Admin. Code r. 335-3-6-.20 immediately upon the effective date of this Consent Order and continuing each 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, 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:

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

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

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

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

Executed in duplicate, with each part being an original.

BCP TANK LINES, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

B. C. Phillips
(Signature of Authorized Representative)

Brian C. Phillips
(Printed Name)

Owner
(Printed Title)

Date Signed: 2-12-07

Mandy Elliott

Onis "Trey" Glenn, III

Director

Date Signed: 4-11-07