

ONIS "TREY" GLENN, III  
DIRECTOR



Alabama Department of Environmental Management  
adem.alabama.gov

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

BOB RILEY  
GOVERNOR

December 16, 2008

**CERTIFIED MAIL NO: 7005 1820 0003 1877 5666**  
**RETURN RECEIPT REQUESTED**

MR KEITH HOLLEY  
PIPELINE TRUCKING LLC  
10000 HOLTVILLE ROAD  
DEATSVILLE AL 36022

Re: Consent Order 09-019-CAP



Dear Mr. Holley:

Please find enclosed ADEM Consent Order No. 09-019-CAP which requires Pipeline Trucking LLC, 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 Pipeline Trucking LLC and the Department. Please refer to Order Items A. and B. for the dates by which the monetary penalties must be paid.

If you have any questions concerning this matter, please contact E. Spring Tate at (334) 270-5667 in Montgomery.

Sincerely,

A handwritten signature in dark ink, appearing to be "RWG", written over a horizontal line.

Ronald W. Gore, Chief  
Air Division

RWG/est

Enclosure

Cc: Oliva 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: )

**Pipeline Trucking LLC** )

Company Trailer No. 4607 )

Wetumpka, Elmore County, Alabama )

ADEM Permit No. 205-T005-X001 )

**CONSENT ORDER**

No. 09-019-CAP

***PREAMBLE***

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

***STIPULATIONS***

1. Pipeline is the permitted owner and/or operator of a gasoline transport vessel (hereinafter, "tank truck") operating in Wetumpka, Elmore County, Alabama. The tank truck is operating under the authority of ADEM Permit No. 205-T005-X001 (hereinafter, the "Permit") issued on January 20, 2006 (ADEM Air Sticker #00236 that expires in January 2009).

2. The Department is a duly constituted department of the State of Alabama pursuant to §§22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.).

3. Pursuant to §22-22A-4(n), Ala. Code (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 to 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 to 22-28-23, (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-6-.20(3)(b)(c)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: (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.

5. On June 24, 2008, the Department received from Pipeline a faxed copy of a Method 27 Test requesting a renewal Air Sticker. The Method 27 Test was conducted on December 11, 2007, but was not submitted to the Department for processing. Pipeline had allowed the previous Air Sticker to expire on January 31, 2008.

6. On July 28, 2008, the Department issued a Notice of Violation (NOV) to Pipeline for allowing a gasoline tank truck to be filled or emptied without the gasoline tank truck having valid Department Air Sticker attached and visibly displayed, in violation of ADEM Admin Code r. 335-3-6-.20(3)(b)(c).

7. On August 8, 2008, Pipeline submitted a response to the NOV stating that a Method 27 Test was not submitted to the Department due to an error on its part by failing to recognize the requirement that the test report must be submitted in order to obtain a Department Air Sticker. Additionally, Pipeline indicated that since receiving the NOV, it has implemented a reminder calendaring system so that the Method 27 Test will be sent to the Department as soon as the test is completed.

8. Pipeline consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

9. 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***

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: Pipeline allowed its tank truck to be loaded/unloaded without having a valid Department Air Sticker and failed to obtain a new Air Sticker until June 24, 2008. However, the Department is not aware of irreparable harm to 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 Permit, Pipeline did not exhibit a standard of care commensurate with Department rules and regulations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any evidence that these violations resulted in significant economic benefit to Pipeline.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Since receiving the July 28, 2008 NOV, Pipeline has implemented a reminder calendaring system so that the Method 27 Test will be sent to the Department as soon as the test is completed.

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

F. THE ABILITY TO PAY: Pipeline 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, Pipeline, 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 Pipeline agree to enter into this ORDER with the following terms and conditions:

A. Pipeline shall pay to the Department a civil penalty in the amount of \$1,500.00 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. Pipeline 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. Pipeline shall submit a plan to the Department detailing how it will ensure that the Air Sticker is kept current, not later than forty-five days from the effective date of this Consent Order.

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

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

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

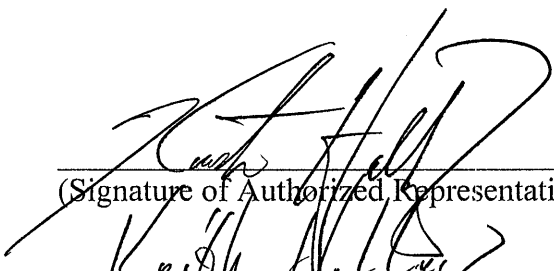


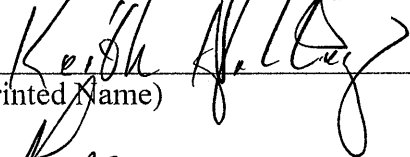
O. The Department and Pipeline agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Pipeline of its obligations to comply in the future with any permit.


Executed in duplicate, with each part being an original.

PIPELINE TRUCKING LLC

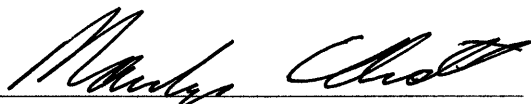
ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

  
(Signature of Authorized Representative)

  
(Printed Name)

  
(Printed Title)

Date Signed: Oct 8 2008

  
Onis "Trey" Glenn, III  
Director

Date Executed: December 16, 2008