

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )
J. C. Pippin Cleaners and Furriers, Inc. )
Gadsden, Etowah County, Alabama )
ADEM Facility No. 307-D003 )

CONSENT ORDER NO. 20-\_\_\_\_-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 J. C. Pippin Cleaners and Furriers, Inc. ("Pippin") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-17, as amended, and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 through 22-28-23, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

- 1. Pippin owns and operates a perchloroethylene (PERC) dry cleaning facility ("Facility") located at 600 Chestnut Street, Gadsden, Etowah County, Alabama, which utilizes one dry-to-dry PERC machine.
2. The Department is a duly constituted agency of the State of Alabama pursuant to Ala. Code §§22-22A-1 through 22-22A-17, as amended.
3. Pursuant to Ala. Code §22-22A-4(n), as amended, 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, as

*amended.*

4. The National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 CFR Part 63, Subpart M, for National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities is incorporated into ADEM Admin. Code r. 335-3-11-.06 (12), by reference thereby making the standard applicable to PERC dry cleaners in Alabama.

5. Pursuant to ADEM Admin. Code r. 335-3-1-.04 (1), the Department has been delegated the authority to request regulatory compliance information from PERC dry cleaners in Alabama.

6. 40 CFR, Part 63, Subpart M §63.322 (k)(1) through (11) states:

The owner or operator of a dry cleaning system shall inspect the system weekly for perceptible leaks while the dry cleaning system is operating. Inspection with a halogenated hydrocarbon detector or PCE gas analyzer also fulfills the requirement for inspection for perceptible leaks. The following components shall be inspected:

- (1) Hose and pipe connections, fittings, couplings, and valves;
- (2) Door gaskets and seatings;
- (3) Filter gaskets and seatings;
- (4) Pumps;
- (5) Solvent tanks and containers;
- (6) Water separators;
- (7) Muck cookers;
- (8) Stills;
- (9) Exhaust dampers;
- (10) Diverter valves; and
- (11) All filter housings.

7. 40 CFR, Part 63, Subpart M §63.322 (o)(1) states:

The owner or operator of a dry cleaning system shall inspect the components listed in paragraph (k) of this section for vapor leaks monthly while the component is in operation.

8. 40 CFR, Part 63, Subpart M §63.323 (a) (1) states:

(a) When a refrigerated condenser is used to comply with §63.322(a)(1) or (b)(1): (1) The owner or operator shall monitor on a weekly basis the parameters in either paragraph (a)(1)(i) or (ii) of this section. (i) The refrigeration system high pressure and low pressure during the drying phase to determine if they are in the range specified in the manufacturer's operating instructions. (ii) The temperature of the air-perchloroethylene gas-vapor stream on the outlet side of the refrigerated condenser on a dry-to-dry machine, dryer, or reclaimer with a temperature sensor to determine if it is equal to or less than 7.2 °C (45 °F) before the end of the cool-down or drying cycle while the gas-vapor stream is flowing through the condenser. The temperature sensor shall be used according to the manufacturer's instructions and shall be designed to measure a temperature of 7.2 °C (45 °F) to an accuracy of ±1.1 °C (±2 °F).

9. 40 CFR, Part 63, Subpart M §63.324 (d)(3), (4), and (5) state:

Each owner or operator of a dry cleaning facility shall keep receipts of perchloroethylene purchases and a log of the following information and maintain such information on site and show it upon request for a period of 5 years: (3) The dates when the dry cleaning system components are inspected for leaks, as specified in §63.322(k), (l), or (o)(1), and the name or location of dry cleaning system components where leaks are detected; (4) The dates of repair and records of written or verbal orders for repair parts to demonstrate compliance with §63.322(m) and (n); (5) The date and monitoring results (temperature sensor or pressure gauge) as specified in §63.323 if a refrigerated condenser is used to comply with §63.322(a), (b), or (o).

10. 40 CFR, Part 63 Subpart M §63.324 (e) states:

Each owner or operator of a dry cleaning facility shall retain onsite a copy of the design specifications and the operating manuals for each dry cleaning system and each emission control device located at the dry cleaning facility.

DEPARTMENT'S CONTENTIONS

11. On November 21, 2019, the Department conducted an inspection of Pippin's. The halogenated hydrocarbon detector (HHD), the operating manual, and the following records were not available at the time of inspection:

- (a) All PERC purchase receipts;
- (b) Records of monthly PERC purchases;
- (c) A 12-month rolling total for PERC purchases;
- (d) Documentation showing that weekly leak detection inspections were conducted;
- (e) Documentation showing that weekly temperature and/or pressure monitoring of the refrigerated condenser was conducted;
- (f) Monthly documentation showing that leak detection and repair (LDAR) inspections were conducted; and
- (g) Complete operating manual.

12. On December 20, 2019, the Department issued a Notice of Violation (NOV) to the Pippin for failure to have the compliance records available for review or a complete operating manual in violation of ADEM Admin. Code rs. 335-3-1-.04 (1) and 335-3-11-.06 (12). The NOV requested a written response to the questions regarding recordkeeping and ways to prevent any future compliance issues concerning the PERC NESHAP.

13. On January 21, 2020, the Pippin principal owner responded to the NOV via facsimile as follows:

- (a) He moved his office from the Facility to his home a few years ago, which is why he has consistently not kept the records on-site.
- (b) He plans to move the records back to the Facility.

(c) He will schedule a particular day for recordings and leak detections.

(d) He will post monthly rolling totals at the end of each month, and transfer monthly totals.

(e) He did not address the lack of a complete operating manual.

14. On January 28, 2020, the Department notified Pippin via telephone that the January 21, 2020, NOV response was inadequate for the follow reasons:

(a) The PERC purchase receipt information discovered during the November 21, 2019, inspection and the PERC purchase receipts provided in the NOV response did not correspond.

(b) The 12-month rolling total and yearly PERC consumption was inaccurate, and the lack of having an operating manual was not addressed.

15. On January 29, 2020, the principal owner requested a list of the PERC purchase receipts that were missing from the NOV response, which was provided via telephone. During the call, the Department requested that Pippin submit a corrected copy of the 12-month rolling total reflecting these changes and the Department has yet to receive a corrected copy or proof of a complete operating manual.

16. On February 2 and 7, 2020, the Department received copies of PERC purchase receipts from Pippin via facsimile. However, three copies of PERC purchase receipts were missing based upon the November 21, 2019 inspection (specifically, 30 gallons purchased June 27, 2018; 15 gallons purchased August 21, 2018; and 15 gallons purchased January 29, 2019).

17. 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 these 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 maintaining the required records in such a manner as to comply with the applicable regulations, Pippin did not exhibit the requisite standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Pippin likely derived little, if any, economic benefit from its non-compliance.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts made by the Pippin to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has previously issued Pippin warning letters for the following reasons:

1) December 22, 2015 – A warning letter was issued to Pippin due to no records available on-site during inspection.

2) December 7, 2017 – A warning letter was issued Pippin due to no records available on-site during inspection. Pippin’s response was inadequate due to several PERC purchase receipts being recorded, but no proof of purchase provided, and provided receipts that were not recorded. The specifics were addressed during a telephone call with the Pippin principal owner, who stated that a corrected copy of the 12-month rolling total would be submitted.

3) March 29, 2018 – A past due warning letter was issued to Pippin due to a lack of response to the December 7, 2017, warning letter. No response to this warning letter was received.

F. THE ABILITY TO PAY: Pippin 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.

18. 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 hereby made a part of the Department’s Contentions*).

19. The Department neither admits nor denies Pippin’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.

PIPPIN'S CONTENTIONS

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

ORDER

THEREFORE, Pippin, 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 Pippin agree to enter into this ORDER with the following terms and conditions:

A. Pippin agrees to pay to the Department a civil penalty in the amount of \$2,500.00 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. Pippin 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. Pippin 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 required equipment and manual are onsite, and that the records will be kept current.

D. Pippin agrees to comply with the terms, limitations, and conditions of 40 CFR, Part 63, Subpart M and the applicable air regulations 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. Pippin 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, Pippin 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. Pippin also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Pippin 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 Pippin, 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 Pippin) 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 Pippin, 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 Pippin 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 Pippin 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 Pippin 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 Pippin does hereby waive any hearing on the terms and conditions of same.

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

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

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

Executed in duplicate, with each part being an original.

J. C. PIPPIN CLEANERS AND  
FURRIERS, INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT



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

Jerry Pippin

\_\_\_\_\_  
(Printed Name)

President

\_\_\_\_\_  
(Printed Title)

Date Signed: 6/26/20

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

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

**Attachment A**

**J. C. Pippin Cleaners and Furriers, Inc.  
Gadsden, Etowah County  
Air Facility Number: 307-D003**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>	
Not maintaining required records	5	\$750	\$500	\$750	
No complete operating manual	1	\$200	\$100	\$200	<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$950</b>	<b>\$600</b>	<b>\$950</b>	<b>\$2,500</b>

<b>Adjustments to Amount of Initial Penalty</b>	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
<b>Total Adjustments (+/-) Enter at Right</b>	<b>\$0</b>

<b>Economic Benefit (+)</b>	
<b>Amount of Initial Penalty</b>	\$2,500
<b>Total Adjustments (+/-)</b>	\$0
<b>FINAL PENALTY</b>	\$2,500

Footnotes

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