

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Supreme Oil Company)
881 North Main Street)
Brundidge, AL 36010)
Pike County, AL)

Permit No. IU325500090)

Consent Order No. XX-XXX-XXX

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Supreme Oil Company (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a food processing facility (hereinafter "the Facility"), known as Supreme Oil Company located at 881 North Main Street in the city of Brundidge, Pike County, Alabama. The Permittee discharges pollutants from a point source into the City of Brundidge wastewater treatment plant (hereinafter "WWTP").
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.
4. In accordance with ADEM Admin. Code chap. 335-6-5 and the AWPCA, the Department

issued State Indirect Discharge (hereinafter "SID") Permit No. IU325500090 (hereinafter "the Permit") to the Permittee on June 12, 2014, effective July 1, 2014. The Permit establishes limitations on the discharges of pollutants from a point source, designated therein as outfall number DSN001S, into the City of Brundidge WWTP. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. ADEM Admin. Code r. 335-6-5-.05(4) requires a holder of an SID permit to comply with all provisions of the SID permit. In addition, under ADEM Admin. Code r. 335-6-5-.15(1)(a), "[a]ny permit noncompliance constitutes a violation of the AWPCA...and is grounds for enforcement action...."

6. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants in violation of the limits imposed by Part I.A of the Permit. The effluent violations noted are listed in Attachment #1.

7. On December 30, 2014, the Department issued a Warning Letter to the Permittee for effluent exceedances of Oil and Grease and pH Permit limitations, and for failure to submit noncompliance notification forms for the exceedances. On January 28, 2015 and February 5, 2015, the Permittee submitted the missing noncompliance notification forms to the Department, which detailed the causes of the violations and the corrective actions taken.

8. On October 2, 2015, the Department issued a Notice of Violation to the Permittee for Oil and Grease and pH effluent violations of permit limitations. On November 2, 2015, the Department received the Permittee's response to the Notice of Violation. The response indicated that the Permittee had completed multiple improvements to the Facility, and additional improvements were planned to be completed by the end of April 2016.

9. On July 27, 2016, the Department conducted an inspection of the Facility and collected an effluent sample. While not an effluent violation, the single sample result for oil and grease (1658.8

mg/l) for the Facility's discharge indicated a level significantly in excess of the monthly average Permit limitation for oil and grease (100 mg/l).

10. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

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

CONTENTIONS

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 summarized in Attachment #2, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Based on information available to the Department, violations of the Permit, ADEM Admin. Code chap. 335-6-5, and the AWPCA were noted. The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, the effects on the WWTP, and any available evidence of irreparable harm to the environment or threat to the public.

B. THE STANDARD OF CARE: In consideration of the standard of care manifested by the Permittee, the Department believes the civil penalty is sufficient and has not enhanced the penalty based on this factor.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has considered that delayed compliance may have conferred an economic benefit upon the Permittee but is unable to estimate the economic benefit associated with the violations cited above, as the costs for compliance are not available.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of violations prior to the violations addressed by this Order. In consideration of the history of previous violations, the Department has enhanced the penalty.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment #2.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has 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 believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore,

the Department and the Permittee (hereinafter collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount of \$6,500.00 in settlement of the violations alleged herein within forty-five days after issuance of this Consent Order. Failure to pay the civil penalty within forty-five days after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. 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. The Permittee shall prepare and submit to the Department, not later than sixty days after the issuance of this Consent Order, an Engineering Report that identifies the potential causes of noncompliance and summarizes an investigation of the changes necessary for the Permittee to achieve and maintain compliance with the Permit. The Engineering Report shall include a Compliance Plan with a schedule for implementation of necessary corrective actions [and cost of such necessary corrective actions, if known]. At a minimum, the Permittee shall consider each of the following in making its investigation: the need for changes in maintenance and operating procedures; the need for modification of existing treatment and collection system works; and the need for new or additional treatment and collection system works. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the Report is not sufficient to help the Permittee accomplish compliance with the Permit, then the Report shall be modified accordingly. The Permittee shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations made in the Engineering Report not later than 180 days after the issuance of this Consent Order.

D. The Permittee shall prepare and submit progress reports to the Department describing in detail the Permittee's progress towards achieving compliance with the items presented in the Compliance Plan, [including the cost of necessary corrective actions.]. The Permittee shall submit such reports so that they are received by the Department sixty days after the issuance of this Consent Order and continuing every sixty days thereafter that the Permittee's performance obligations under this Consent Order remain incomplete. In addition, no later than fourteen days following each due date herein, the Permittee shall submit to the Department a written notice of noncompliance with the requirements of that paragraph, if applicable. Notices of noncompliance shall state the cause(s) of noncompliance, the corrective action taken, and shall describe the Permittee's ability to comply with any remaining requirements of this Consent Order.

E. No later than 180 days after the issuance of this Consent Order, the Permittee shall comply with the Permit limitations for Oil and Grease and pH.

F. The Permittee shall comply with all other terms, conditions, and limitations of the Permit immediately upon the issuance of this Consent Order.

G. The Permittee shall submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Permittee is in compliance with all requirements of this Consent Order. The permittee shall submit such certification so that it is received by the Department no later than 210 days after issuance of this Consent Order.

H. After the issuance date of this Consent Order, the Permittee shall pay stipulated penalties for each day it fails to meet any of the deadlines in Paragraphs C, D, and G herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in Paragraphs C, D, and G, the Department reserves the right to file a new action against the Permittee.

I. Should violations continue to occur after 180 days after the issuance of this Consent Order or as stipulated in Paragraph H above, then the Department may issue an additional order or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

J. Payment of stipulated penalties for violations of milestone dates under this Consent Order are due no later than the 28th day of the month following the month a milestone date was not achieved. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

K. 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.

L. 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 cited in this Consent Order.

M. The Permittee it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

N. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee 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 the Permittee, 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 the Permittee) 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 shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by 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 the Permittee, 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.

O. 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 other orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate. The Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

P. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

Q. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

R. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

S. Should any provision of this Consent 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.

T. Any modification of this Consent Order shall be agreed to in writing and signed by both Parties.

U. Except as otherwise set forth herein, this Consent 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 the Permittee of its obligation to comply in the future with any permit.

Executed in duplicate, with each part being an original.

SUPREME OIL COMPANY

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

By: 

By: _____

Its: VP-CLO

Its: _____

Date: 10/11/16

Date: _____

Attachment 1: Effluent Violations

<u>Monitoring Period</u>	<u>Outfall</u>	<u>Parameter</u>	<u>Average, Max, Min</u>	<u>Unit</u>	<u>Limit</u>	<u>Reported Value</u>
July 2014	DSNS011	pH	Daily Min	s.u.	5.0	4.0
July 2014	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	160
August 2014	DSNS011	pH	Daily Min	s.u.	5.0	4.0
August 2014	DSNS011	pH	Daily Max	s.u.	10.5	11.0
September 2014	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	504
October 2014	DSNS011	pH	Daily Min	s.u.	5.0	4.0
October 2014	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	220
November 2014	DSNS011	pH	Daily Min	s.u.	5.0	3.7
January 2015	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	159
February 2015	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	429
March 2015	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	155
April 2015	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	196
May 2015	DSNS011	pH	Daily Min	s.u.	5.0	4.4
May 2015	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	114
June 2015	DSNS011	pH	Daily Min	s.u.	5.0	4.2
June 2015	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	101
July 2015	DSNS011	pH	Daily Min	s.u.	5.0	4.6
July 2015	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	1268
August 2015	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	974
September 2015	DSNS011	pH	Daily Min	s.u.	5.0	4.4
September 2015	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	560

October 2015	DSNS011	pH	Daily Min	s.u.	5.0	4.4
October 2015	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	1645
November 2015	DSNS011	pH	Daily Min	s.u.	5.0	4.8
April 2016	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	216
May 2016	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	588
June 2016	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	676
July 2016	DSNS011	Oil & Grease	Monthly Avg	mg/l	100	177
August 2016	DSNS011	Oil and Grease	Monthly Avg	mg/l	100	244

Attachment 2

Supreme Oil
 Brundidge, Pike County
 IU325500090

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
SID Effluent Violations	21	\$ 5,450.00	\$ -	\$ 1,050.00

\$5,450.00	\$0.00	\$1,050.00
Total (A)	Total (B)	Total (C)
Base Penalty Total		\$6,500.00
[Total (A) + Total (B) + Total (C)]		
Mitigating Factors (-)		
Economic Benefit (+)		\$0.00
Ability to Pay (-)		
Other Factors (+/-)		
INITIAL PENALTY		\$6,500.00
Total Adjustments (+/-)		\$0.00
FINAL PENALTY		\$6,500.00

Additional Adjustments due to negotiations, receipt of additional information, or public comment

Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-)	



Footnotes

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