

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
Whatley Oil & Auto Parts Company, Inc.)	CONSENT ORDER No. 25-XXX-CAP
Cuthbert, Georgia)	
Facility ID No. 805-T015)	
)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“Department” or “ADEM”) and Whatley Oil & Auto Parts Company, Inc. (“Permittee”) 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. Whatley Oil & Auto Parts Company, Inc. is the owner and/or operator of a gasoline transport vessel (hereinafter “Tank Truck”) operating in Eufaula, Barbour County, Alabama.
2. The Department is a duly constituted department 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. ADEM Admin. Code r. 335-3-6-.07 (3) states: “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 control system in accordance with paragraph (4) of this rule.”

5. ADEM Admin. Code r. 335-3-6-.07 (4) states in part: “The vapor control system required by paragraph (3) of this rule shall include... a vapor balance system (Stage I) between the stationary storage tank and the gasoline tank truck and a system that will ensure the vapor line is connected before gasoline can be transferred into the tank.”

6. ADEM Admin. Code r. 335-3-6-.07 (5) states in part: “Each owner or operator of a gasoline dispensing facility subject to this rule shall... not permit the transfer of gasoline between a gasoline tank truck and a stationary storage tank unless the gasoline tank truck complies with rule 335-3-6-.20 and the vapor control system is connected and operating in accordance with paragraph (4) of this rule.”

7. ADEM Admin. Code r. 335-3-6-.20 (3) states in part: “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... 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

8. On April 2, 2025, Department personnel observed the Permittee delivering gasoline to an underground storage tank at Barr Distributing Company Bulk Plant (Air Permit 602-B002-X001), located at 1520 S Randolph Avenue in Eufaula, without utilizing the required vapor balance system. Additionally, it was noted they were operating without an Air Permit/Air Sticker.

9. On April 17, 2025, the Department issued a Notice of Violation (“NOV”) to the Permittee for allowing gasoline to be transferred between the Tank Truck and a gasoline storage tank without utilizing the vapor balance system and for operating without an Air Permit.

10. On May 14, 2025, the Department received the Permittee’s response to the NOV, which stated they deliver very little gasoline to that location and were not aware of the requirement to obtain an Air Sticker to deliver gasoline to a Bulk Plant. They further stated they had no explanation for why the driver did not utilize the vapor balance system and only delivered one compartment of gas on the bulk side of the location.

11. 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. In arrival at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Permittee, during the transfer of gasoline from an unpermitted Tank Truck to the gasoline storage tank, failed to process gasoline vapors through a vapor control system and allowed gasoline vapors to be emitted into the atmosphere. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: By operating the Tank Truck without prior authorization from the Department, and not utilizing the vapor control system, the Permittee did not exhibit the requisite standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee likely derived some 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 Permittee to minimize or mitigate the effects upon the environment due to its non-compliance at the time of the violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has previously issued the Permittee an NOV on March 28, 2023, for operating 2 gasoline tank trucks with expired Air Stickers.

F. THE ABILITY TO PAY: The Permittee 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.

12. 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 and consistent with the historical penalty range imposed by the Department for similar violations (*See* Attachment "A", which is hereby made a part of Department's Contentions).

13. The Department neither admits nor denies the Permittee'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.

PERMITTEE'S CONTENTIONS

14. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. The Permittee retrained the employees on the importance of utilizing the vapor balance system after the time of violation. The Permittee applied and received Air Permits for four gasoline tank trucks after the violation.

ORDER

THEREFORE, the Permittee, 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 Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$3,500 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. The Permittee 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
Post Office Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with the terms, limitations, and conditions of the Permit and ADEM regulations everyday hereafter.

D. 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.

E. 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.

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

G. For purposes of this Consent Order only, the Permittee 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. The Permittee also agrees that 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 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 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.

H. The Department and the Permittee 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 Permittee 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 the Permittee 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.

I. The Department and the Permittee 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 the Permittee does hereby waive any hearing on the terms and conditions of same.

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

K. The Department and the Permittee 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.

L. The Department and the Permittee 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.

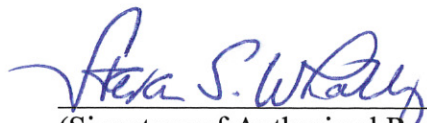
M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee 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 the Permittee of its obligations to comply in the future with any permit.

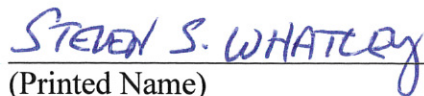
Executed in duplicate, with each part being an original.

WHATLEY OIL & AUTO
PARTS COMPANY, INC.

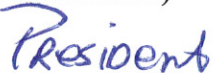
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



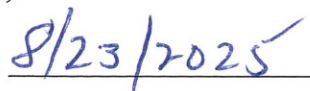
(Signature of Authorized Representative)



(Printed Name)



(Printed Title)

Date Signed: 

Jeffery W. Kitchens
Acting Director

Date Executed: _____

Attachment A
 Whatley Oil & Auto Parts Company, Inc.
 Cuthbert, Georgia
 Facility ID No. 805-T015

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Delivering gasoline without utilizing vapor recovery equipment	1	\$2,000	\$2,000	-	
Operating without an Air Permit/Air Sticker	1	\$1,000	-	\$1,000	Total of Three Factors
TOTAL PER FACTOR		\$3,000	\$2,000	\$1,000	\$6,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	-\$2,500
Ability to Pay (-)	-
Other Factors (+/-)	-
Total Adjustments (+/-) <i>Enter at Right</i>	-\$2,500

Economic Benefit (+)	-
Amount of Initial Penalty	\$6,000
Total Adjustments (+/-)	-\$2,500
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.