

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

June 6, 2012

CERTIFIED MAIL NO: 91 7108 2133 3936 5736 9464
RETURN RECEIPT REQUESTED

MR ROBERT E SANDLIN
FLORIDA ROCK & TANK LINES INC
501 RIVERSIDE AVENUE
SUITE 500
JACKSONVILLE FL 32202

91 7108 2133 3936 5736 9464

RE: Consent Order 12-123-CAP

Dear Mr. Sandlin:

Please find enclosed ADEM Consent Order No. 12-123-CAP which requires Florida Rock and 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 Florida Rock and the Department. Please refer to Order Items A and B for the dates by which the monetary penalties must be paid. Also, please note that 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 Samantha Bowen at (334) 274-4225 in Montgomery.

Sincerely,

Ronald W. Gore, Chief
Air Division

Enclosure

cc: Tom Johnston, 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:)

Florida Rock & Tank Lines, Inc.)

Lee County, Alabama)

Company Trailer Nos. TE-0065, TE-0075)

TE-5314 & TE-5318)

ADEM Permit Nos. 801-T006-X101-X102)

801-T006-X161-X162)

CONSENT ORDER NO. _____

12-123-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 Florida Rock & Tank Lines Inc. (hereinafter, "Florida Rock") 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. Florida Rock is the permitted owner and/or operator of gasoline transport vessels, Company Trailer Nos. TE-0065, TE-0075, TE-5314, and TE-5318 (hereinafter, the "Tank Trucks"), operating within Alabama and based in Jacksonville, Duval County, Florida. The Tank Trucks are operating under the authority of ADEM Permit Nos. 801-T006-X101 (ADEM Air Sticker #00434) and 801-T006-X102 (ADEM Air Sticker #00435) issued on March 31, 1995, and ADEM Permit Nos. 801-T006-X161 (ADEM Air Sticker #00439) and 801-T006-X162 (ADEM Air Sticker #00021) issued on January 28, 2000 (hereinafter, the "Permits").

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

3. Pursuant to Ala. Code § 22-22A-4(n) (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) and (c) state:

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. ADEM Admin. Code r. 335-3-6-.20(4)(a) and (c) state:

(a) The owner or operator of a vapor collection system subject to this rule shall not load or cause to be loaded the said gasoline tank truck without a valid Air Sticker for the gasoline tank truck. An Air Permit and Air Sticker shall be issued by the Department for the gasoline tank truck upon receipt of appropriate documentation from the owner or operator documenting that the gasoline tank truck has been leak checked by the test method referenced in rule 335-3-6-.16(12)(c) and has during the test sustained a pressure change of no more than 0.750 kPa (3 inches of H₂O) within five (5) consecutive minutes when pressurized to a gauge pressure 4.50 kPa (18 inches of H₂O) and, when evacuated to a gauge pressure of 1.50 kPa (6 inches of H₂O) during the testing; and, (c) the Air sticker shall be renewed annually upon successful demonstration by the owner or operator that the gasoline tank truck has been leak checked and passed the requirements of subparagraph (a) of this paragraph above.

DEPARTMENT'S CONTENTIONS

6. On January 13, 2012, the Department received from Florida Rock Method 27 Vapor Tightness Tests as part of its request to renew the Air Stickers for the Tank Trucks. Upon review, the Department discovered that Florida Rock allowed the previous Air Stickers to expire on December 31, 2011. The Department was informed, after it contacted Florida Rock, that the Tank Trucks had been utilized in Alabama since the expiration of the Air Stickers.

7. On January 19, 2012, the Department sent Florida Rock a letter requesting the names and addresses of all bulk gasoline terminals, bulk plants, refineries, and Stage I gasoline dispensing facilities in

Alabama where gasoline was loaded or unloaded using the Tank Trucks since the expiration of the Air Stickers.

8. On January 30, 2012, the Department received from Florida Rock a response to the letter that included a list of all Stage I gasoline dispensing facilities in Alabama where gasoline was unloaded using the Tank Trucks. The Tank Trucks unloaded gasoline at these facilities a total of fourteen times after the expiration of the Air Stickers on December 31, 2011.

9. 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 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day 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: Florida Rock allowed the Tank Trucks to be unloaded without having a valid Department Air Sticker. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: By not operating the Tank Trucks in compliance with the Permits, Florida Rock did not exhibit a standard of care commensurate with the requirements of the Alabama Pollution Control Act and Department rules and regulations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Florida Rock likely derived little, if any, economic benefit from its non-compliance and delayed 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 Florida Rock to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued Florida Rock a Consent Order in 2012 for loading and unloading gasoline without a valid Air Sticker.

F. THE ABILITY TO PAY: Florida Rock 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 that 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.

10. 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 made a part of Department's contentions).

11. The Department neither admits nor denies Florida Rock'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.

FLORIDA ROCK'S CONTENTIONS

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

ORDER

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

A. Florida Rock agrees to pay the Department a civil penalty in the amount of \$3,000.00 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. Florida Rock 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. Florida Rock agrees to submit a plan to the Department that details how it will ensure that the Air Stickers are kept current and that this violation will not reoccur, no later than forty-five days from the effective date of this Consent Order.

D. Florida Rock agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-6-.20 and Permits immediately upon the effective date of this Consent Order and continuing 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. Florida Rock 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, Florida Rock 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. Florida Rock also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Florida Rock 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 Florida Rock, 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 Florida Rock) 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 Florida Rock,

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 Florida Rock 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 Tank Trucks 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 Florida Rock 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 Florida Rock 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 Florida Rock does hereby waive any hearing on the terms and conditions of same.

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

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

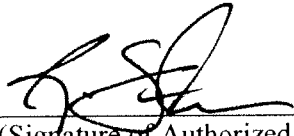
O. The Department and Florida Rock agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal,

State or local law, and shall not be construed to waive or relieve Florida Rock of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

FLORIDA ROCK & TANK LINES, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

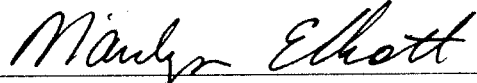
Rob Sandlin

(Printed Name)

President

(Printed Title)

Date Signed: 4-4-12



Lance R. LeFleur
Director

Date Executed: 6/6/12

Attachment A

Florida Rock & Tank Lines, Inc
Company Trailer Nos. TE0065, TE0075, TE5314, & TE5318
Waynesboro, Wayne County, Mississippi
ADEM Permit Nos. 801-T006-X162, 801-T006-X161, 801-T006-X102, & 801-T006-X101

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Delivering gasoline without a valid Air Permit and Sticker	14	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00
<i>TOTAL</i>	<i>14</i>	<i>\$ 1,000.00</i>	<i>\$ 1,000.00</i>	<i>\$ 2,000.00</i>

Economic Benefit	\$ -
Mitigating Factors	\$ -
Ability to Pay	\$ -
Other Factors	<u>\$ (1,000.00)</u>
CIVIL PENALTY	\$ 3,000.00

Footnotes

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

English

Customer Service

USPS Mobile

Register / Sign In



Search USPS.com or Track Packages

Quick Tools

Ship a Package

Send Mail

Manage Your Mail

Shop

Business Solutions

Track & Confirm

GET EMAIL UPDATES

YOUR LABEL NUMBER

9171062133393657369464

SERVICE

STATUS OF YOUR ITEM

DATE & TIME

LOCATION

FEATURES

Delivered

June 11, 2012, 11:26 am

JACKSONVILLE, FL 32202

Certified Mail™

Notice Left (Business Closed)

June 09, 2012, 11:34 am

JACKSONVILLE, FL 32202

Processed through USPS Sort Facility

June 09, 2012, 6:03 am

JACKSONVILLE, FL 32203

Check on Another Item

What's your label (or receipt) number?

LEGAL

Privacy Policy ›
Terms of Use ›
FOIA ›
No FEAR Act EEO Data ›

ON USPS.COM

Government Services ›
Buy Stamps & Shop ›
Print a Label with Postage ›
Customer Service ›
Site Index ›

ON ABOUT.USPS.COM

About USPS Home ›
Newsroom ›
Mail Service Updates ›
Forms & Publications ›
Careers ›

OTHER USPS SITES

Business Customer Gateway ›
Postal Inspectors ›
Inspector General ›
Postal Explorer ›

Copyright© 2012 USPS. All Rights Reserved.