

LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
GOVERNOR

Alabama Department of Environmental Management  
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Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

July 29, 2014

**CERTIFIED MAIL 91 7108 2133 3936 7153 9577**

Mr. Richard Mayers  
Sipsey Oil Company  
P.O. Box 510  
Vernon, Alabama 35592

**RE: Consent Order No. 14-086-CUST**  
Kennedy Express  
17927 Highway 96  
Kennedy, Lamar County, Alabama  
UST Facility ID No. 24160-075-004794

Dear Mr. Mayers:

Enclosed please find Consent Order No. 14-086-CUST, which requires you to take certain actions in regard to alleged violations of the Alabama Underground Storage Tank (UST) and Wellhead Protection Act. This order has been issued with your consent and is final and not appealable.

Please note the issuance date July 29, 2014. Payment of the civil penalty in the amount of \$1,250 is to be paid in ten installments of \$125 each. The first payment is due on the first day of the first month following issuance of this order. Subsequent payments are due on the first day of the each month following. Payments should be submitted to the ADEM Office of General Counsel at the above Montgomery address.

Pursuant to the terms of the consent order, you should submit a plan within **15 days** detailing how Sipsey Oil Company will ensure that delivery prohibition will not be violated.

If you have any questions, please contact Lee Davis at 334 271-7759.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip D. Davis", is written over a horizontal line.

Phillip D. Davis, Chief  
Land Division

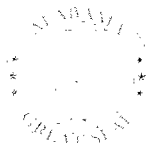
PDD/SSM/MLD/cy

Enclosure

C: Sonja Massey, Chief, Groundwater Branch, ADEM  
Todd Carter, Associate General Counsel, ADEM

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  
3664 Dauphin Street, Suite B  
Mobile, AL 36608  
(251) 304-1176  
(251) 304-1189 (FAX)

**ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of: )

Sipsey Oil Company )

Kennedy Express )

UST Facility ID No. 24160-075-004794 )

Kennedy, Lamar County, Alabama )

**CONSENT ORDER**

**No. 14-086-CUST**

**PREAMBLE**

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.); and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter the "Department" or "ADEM") makes the following findings:

**STIPULATIONS**

1. Sipsey Oil Company (herinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at 17927 Highway 96, Kennedy, Lamar County, Alabama, designated as ADEM Facility I.D. Number 24160-075-004794.

2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rpl.Vol.), ADEM is the State Environmental Control Agency for the purposes of federal environmental law, including 42 U.S.C. §§ 6991 to 6991(m), as amended.

4. ADEM is authorized to administer and enforce the provisions of the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.).

5. Based upon an inspection dated March 25, 2014 of the UST facility and/or a review of facility records, the Department has documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code r. 335-6-15-.45(3), upon implementation of delivery prohibition, it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to an underground storage tank facility that is under delivery prohibition.

7. The Owner accepted delivery of a regulated substance to their underground storage tank facility while it was under delivery prohibition.

8. A Notice of Delinquency (NOD) dated July 10, 2013, was issued by the Department for the Owners failure to submit operator training certification, new or updated notification forms to register all UST systems at the facility, spill catchment basin tests and a contract for SIR Services with a recent monthly SIR report or other proof of leak detection. The Owner was required to submit the requested information within thirty days.

9. On August 26, 2013, upon the Owner's failure to respond to the NOD dated July 10, 2013, the Department issued a Notice of Violation (NOV) requiring the Owner to submit within thirty days documentation of operator training, a notification form, spill catchment basin tests, a contract for SIR Services and a recent monthly SIR report or proof of other leak detection.

10. On October 7, 2013, upon the Owner's failure to respond to the NOD dated July 10, 2013 and NOV dated August 26, 2013, the Department issued a Notice of Proposed Delivery Prohibition for failure to submit documentation of operator training, new or updated notification form to register all UST systems at the facility, spill catchment basin tests, a contract for SIR services and a recent monthly SIR report or other proof of leak detection. The Owner was given till November 1, 2013 to demonstrate compliance otherwise the facility would be placed on delivery prohibition.

11. On November 4, 2013, the Department received from the Owner an agreement for SIR services, a 279 Notification Form, operator training certification and spill catchment basin tests. The Department gave the Owner until December 18, 2013 to submit the November SIR monthly report. Failure to submit the report would result in delivery prohibition being imposed.

12. On December 18, 2013, the Department placed the facility on delivery prohibition.

13. On December 30, 2013, based on the Department's receipt of a tank tightness test the facility was conditionally removed from the Delivery Prohibition List. The Owner was to submit a completed monthly SIR report for January, 2014 and payment of 2014 UST Regulatory Fees by February 19, 2014. Failure to do so would result in delivery prohibition being re-imposed on February 19, 2014.

14. On February 19, 2014, the Department placed the facility on delivery prohibition.

15. On March 25, 2014, a Department inspection revealed that the facility had received fuel on March 24, 2014 while still on delivery prohibition.

16. On March 31, 2014, based on the Department's receipt of a recent monthly SIR report and payment of 2014 UST regulatory tank fees the facility was removed from the Delivery Prohibition List.

17. The Owner neither admits nor denies the allegations contained in this Consent Order. However, in an effort to cooperate with the Department and to resolve the alleged violations, the Owner consents to this Consent Order and agrees to abide by the terms herein.

18. The Department agrees to this Consent Order upon a determination that the terms are in the best interests of the citizens of Alabama in resolving the allegations contained herein without the unwarranted expenditure of State resources in further enforcement actions.

### **CONTENTIONS**

Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rpl. 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. 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 such violation continues shall be a separate violation.

In arriving at the civil penalty assessed in this matter, the Department has considered the following:

(a) Seriousness of the Violation:

The Owner/Operator did not ensure that the facility was not on delivery prohibition. The violations impede the Department's regulatory authority over USTs for threats to public health, safety and the environment.

(b) Standard of Care:

The Owner/Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

(c) Economic Benefit Which Delayed Compliance May Have Conferred:

The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Owner.

(d) Efforts to Minimize or Mitigate the Effects of the Violation Upon the Environment:

There are no known environmental effects as a result of the alleged violations.

(e) History of Previous Violations:

The Owner/Operator does not have a history of previous violations.

(f) Ability to Pay:

The Owner/Operator has not alleged an inability to pay the civil penalty.

- (g) Other Factors: The Department has carefully considered the six statutory 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 has concluded that a civil penalty in the amount of \$1,250.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UST facilities, as follows (see attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Accepted delivery of a regulated substance to a facility on delivery prohibition;	\$0 - \$25,000

**ORDER**

Whereas the parties desire to resolve and settle the compliance issues cited above, the Department and the Owner consent to the terms and conditions of this Consent Order and agree as follows:

A. That after the effective date of this Consent Order, the Owner shall pay to the Department a civil penalty in the amount of \$1,250.00 for the violations cited herein. Said penalty shall be paid in ten installment of \$125.00. The first payment of \$125.00 shall be due on the first day of the first month following the effective date of this Order. Failure to pay the civil penalty shall constitute cause for the Department to file a civil action in the Circuit Court of Montgomery County, Alabama. Payment shall be made by Cashier's Check or Money Order, payable to the Alabama Department of Environmental Management, and addressed as follows:

**Office of General Counsel**  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

B. The parties agree that not later than fifteen days from the effective date of this Consent Order, the Owner shall submit to the Department a plan detailing how it will ensure that Delivery Prohibition will not be violated.

C. 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.

D. That, subject to the terms contained herein and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations alleged in this Consent Order.

E. That the Owner is not relieved from any liability upon the failure to comply with any provision of the Consent Order.

F. That, for purposes of this Consent Order only, the Owner agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. The Owner also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Owner shall be limited to the defenses of compliance with this Agreement, *Force Majeure*, and physical impossibility.

G. The Department and the Owner agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated 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 the Owner shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such actions address new matters not raised in this Consent Order.

H. That this Consent Order shall not affect the Owner's obligation to comply with any Federal, State, or local laws or regulations.

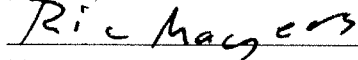
I. That, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

J. That any modifications of this Consent Order must be agreed to in writing signed by both parties.

That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Owner does hereby waive any hearing on the terms and conditions of same.



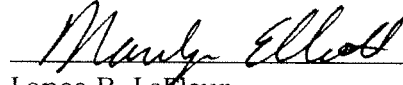
(Signature)



(Please Print Name and Title of Authorized Officer)

Richard Mayers, Sipsey Oil Company

Dated: 6/18/14



Lance R. LeFleur,  
Director

Dated: 7.29.14

## Attachment A

**Sipsey Oil Company  
Vernon, Lamar County  
Facility ID No. 24083-075-004794**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>	
ADEM Admin Code r. 335-6-15-.45(3) states that it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to a UST facility that is under delivery prohibition.	1	\$1,250	\$1,250	\$0	
					<b>Total of Three Factors</b>
<b><i>TOTAL PER FACTOR</i></b>		<i>\$1,250</i>	<i>\$1,250</i>	<i>\$0</i>	<i>\$1,250</i>

<b>Adjustments to Amount of Initial Penalty</b>	
<b>Mitigating Factors (-)</b>	\$0
<b>Ability to Pay (-)</b>	\$0
<b>Other Factors (+/-)</b>	-\$1,250
<b>Total Adjustments (+/-)</b> <i>Enter at Right</i>	-\$1,250

<b>Economic Benefit (+)</b>	\$0
<b>Amount of Initial Penalty</b>	\$2,500
<b>Total Adjustments (+/-)</b>	-\$1,250
<b>FINAL PENALTY</b>	<b>\$1,250</b>

### Footnotes

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