

LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov

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Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

February 17, 2011

**CERTIFIED MAIL NO: 91 7108 2133 3936 5738 5792**  
**RETURN RECEIPT REQUESTED**

MS LEONA CALE  
RICHERSON OIL LLC  
PO BOX 1028  
BAY MINETTE AL 36507

RE: Consent Order 11-056-CAP



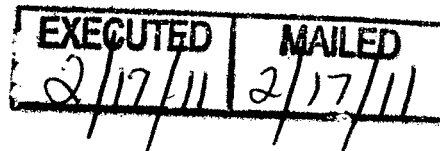
Dear Ms. Cale:

Please find enclosed ADEM Consent Order No. 11-056-CAP which requires Richerson Oil LLC 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 Richerson Oil LLC and the Department. Please refer to Order Items A and B for the dates by which the monetary penalties must be paid. Also, 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: \_\_\_\_\_ )

**Richerson Oil, LLC** \_\_\_\_\_ )

Company Trailer No. 112 \_\_\_\_\_ )

Bay Minette, Baldwin County, Alabama \_\_\_\_\_ )

ADEM Permit No. 501-T005-X002 \_\_\_\_\_ )

**CONSENT ORDER NO.** \_\_\_\_\_

*11-056-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 Richerson Oil, LLC (hereinafter, "Richerson") 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. Richerson is the permitted owner and/or operator of the gasoline bulk plant (hereinafter, the "Bulk Plant") and a gasoline transport vessel (hereinafter, the "Tank Truck") operating in Bay Minette, Baldwin County, Alabama. The Bulk Plant is operating under the authority of ADEM Permit No. 501-B006-X001 issued on April 12, 2010, and the Tank Truck is operating under the authority of ADEM Permit No. 501-T005-X002 issued on February 26, 2009, (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-.05(5)(f) states:

No owner or operator of a bulk gasoline plant, tank truck, or trailer shall permit the transfer of gasoline between tank truck or trailer and stationary storage tanks unless: (f) the gasoline tank truck or trailer has a valid Department Air Sticker as required by Rule 335-3-6-.20(4) attached and visibly displayed.

5. ADEM Admin. Code r. 335-3-6-.20(3)(a)(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: (a) a vapor collection system that meets the test requirements of subparagraph 4(a) of this rule; and, (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.

6. 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 H<sub>2</sub>O) within five (5) consecutive minutes when pressurized to a gauge pressure 4.50 kPa (18 inches of H<sub>2</sub>O) and, when evacuated to a gauge pressure of 1.50 kPa (6 inches of H<sub>2</sub>O) 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***

7. On August 12, 2010, the Department received a telephone call from Richerson regarding a renewal of the Air Sticker for 501-T005-X002. During the call, the Department was informed that Air Sticker #00423 was allowed to expire on November 30, 2009, and that the Tank Truck continued to load from a terminal in Alabama.

8. On August 13, 2010, the Department received a Method 27 Vapor Tightness Test via facsimile for the Tank Truck that was conducted on August 10, 2010. The Department contacted Richerson and was informed that before August 10, 2010, a vapor tightness test had not been conducted for the Tank Truck since October 30, 2008.

9. On August 31, 2010, the Department issued a Notice of Violation (NOV) to Richerson for allowing the Tank Truck to be filled or emptied without having a valid Department Air Sticker attached and visibly displayed, in violation of ADEM Admin Code r. 335-3-6-.20(3)(b) and (c).

10. On September 13, 2010, Richerson responded to the NOV and included the following explanations and information:

a) Richerson indicated that gasoline was loaded exclusively at the Motiva Terminal (Shell) and deliveries were made to the Richerson Oil, LLC Bulk Plant.

b) Copies of the Bill of Lading concerning product loading for Tank Truck 501-T005-X002 during the expired period of the sticker were submitted. The Tank Truck loaded numerous times between November 30, 2009 and August 10, 2010.

c) Richerson explained that there was a personnel change in 2009, and that the Air Sticker renewal was over looked by the driver and operations personnel.

11. Additionally, Richerson violated Proviso No. 15 of the Bulk Plant Permit No. 501-B006-X001 by dispensing and receiving fuel while the Air Sticker for the Tank Truck was expired.

12. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. 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. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Richerson allowed the Tank Truck to be loaded/unloaded without having a valid Department Air Sticker and failed to obtain a new Air Sticker until August 17, 2010. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: By not operating the Tank Truck in such a manner as to comply with the Permits, Richerson did not exhibit a standard of care consistent with the requirements of the ADEM Admin. Code R.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Richerson 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 Richerson to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: Richerson has no prior history of similar enforcement actions with the Department.

F. THE ABILITY TO PAY: Richerson 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.

13. 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, 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).

14. The Department neither admits nor denies Richerson'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.

#### ***RICHERSON'S CONTENTIONS***

15. Richerson neither admits nor denies the Department's contentions. Richerson consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. As such, this Consent Order shall not be deemed or construed at any time for any purpose by anyone (including but not limited to other parties who bring claims in any legal, administrative or other proceeding) as an admission by Richerson of liability.

#### ***ORDER***

THEREFORE, Richerson, 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. (2006 Rplc. Vol.), 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 Richerson agree to enter into this ORDER with the following terms and conditions:

A. Richerson shall pay to the Department a civil penalty in the amount of \$3,500.00 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. Richerson 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. Not later than forty-five days from the effective date of this Consent Order, Richerson shall submit to the Department a plan detailing how it will ensure that the Air Sticker is kept current.

D. Richerson shall 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. Richerson 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, Richerson 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. Richerson also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Richerson 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 Richerson, 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 Richerson) 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 Richerson, 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 Richerson 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 Richerson 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 Richerson 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 Richerson does hereby waive any hearing on the terms and conditions of same.

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

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

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

Executed in duplicate, with each part being an original.

RICHERSON OIL, LLC

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Melinda T. Davidson  
(Signature of Authorized Representative)

Lance R. LeFleur  
Lance R. LeFleur  
Director

Melinda T. Davidson  
(Printed Name)

President  
(Printed Title)

Date Signed: 12/17/10

Date Executed: 2/17/11

## Attachment A

### Penalty Calculation Worksheet

**Richerson Oil, LLC**  
**Bay Minette, Baldwin County, Alabama**  
**Facility No. 501-T005-X002 & 501-B006-X001**

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failure to renew Air Sticker	1	\$ 750.00	\$ 500.00	
Failure to conduct required M27 Vapor Tightness Test	1	\$ 1,500.00	\$ 500.00	
Loading tanker trucker without a valid Air Sticker or M27	1	\$ 625.00	\$ 250.00	
Loading Bulk Plant with a tanker truck with no Air Sticker or M27	1	\$ 625.00	\$ 250.00	
<b>Totals</b>		<b>\$ 3,500.00</b>	<b>\$ 1,500.00</b>	

#### Economic Benefit

Mitigating Factors \$ -

Ability to Pay \$ -

Other Factors \$ (1,500.00)

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**Civil Penalty \$ 3,500.00**

#### Footnotes

\* See the "Findings" of the Order for a detailed description of each violation and penalty factors