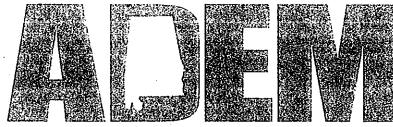


ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management

adem.alabama.gov

1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463

Montgomery, Alabama 36130-1463

(334) 271-7700

FAX (334) 271-7950

BOB RILEY
GOVERNOR

June 18, 2009

CERTIFIED MAIL NO. 91 7108 2133 3935 2993 0907
RETURN RECEIPT REQUESTED

MR RON ROUTLEDGE
VP OPERATIONS AND ENGINEERING
ENSTOR INC
20333 STATE HIGHWAY 249
HOUSTON TX 77070



Dear Mr. Routledge:

RE: Consent Order No. 09-079-CAP
Freebird Gas Storage, L.L.C.
Facility No. 408-0009

Please find enclosed ADEM Consent Order No. 09-079-CAP which requires Freebird Gas Storage, L.L.C. 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 Freebird Gas Storage, L.L.C. and the Department. Please note that the assessed civil penalty is due within 45 days of the effective date of the Order.

If you have any questions concerning this matter, please contact Brandon Cranford at (334) 271-7893.

Sincerely,

Ronald W. Gore, Chief
Air Division

Enclosure

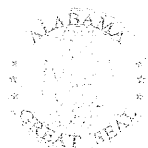
RWG/BRC

cc: OGC ✓



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:)

Freebird Gas Storage, L.L.C.)

East Detroit Storage Facility)

Sulligent, Lamar County, AL)

Air Facility ID No. 408-0009)

CONSENT ORDER NO. 09-C 77-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department") and Freebird Gas Storage, L.L.C. (hereinafter, "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto. The contents herein are the factual Stipulations mutually agreed upon by the parties, the factual Contentions of the Permittee, the factual Contentions of the Department and provisions concerning the Consent Order settlement between the parties.

STIPULATIONS

1. The Permittee is the owner and/or operator of a natural gas compressor and storage facility (hereinafter, the "Facility") located at 2705 Dinkylane Road, Sulligent, Lamar County, Alabama.

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. On June 2, 2006, the Department issued Air Permit Nos. 408-0009-X004, X005, and X006 (hereinafter, "the Permits") to the Permittee authorizing the construction and operation of three 2,370 Hp Caterpillar, G3608, 4-stroke, lean-burn natural gas-fired reciprocating engines, each controlled by an oxidation catalyst (hereinafter, "the Engines"). As outlined in the Permits, the Permittee is required to comply with the applicable requirements of 40 CFR Part 63, Subpart ZZZZ, the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (hereinafter, "the RICE NESHAP") for the Engines. These requirements include:

a. 40 CFR §63.6600 of the RICE NESHAP requires the Permittee to comply with one of the emission limitations in Table 2a of the RICE NESHAP for the Engines. The Permittee elected to comply with Option 1a of Table 2a, which requires the Permittee to reduce carbon monoxide (CO) emissions by at least 93%. (CO is regulated as a surrogate pollutant. Control of CO emissions reflects the control of the hazardous air pollutants emitted by stationary reciprocating internal combustion engines, which include formaldehyde, acrolein, methanol,

and acetaldehyde.) The Permittee elected to comply with the CO emission limitation by using an oxidation catalyst.

b. 40 CFR §63.6600 of the RICE NESHAP requires the Permittee to meet operating limitations for the catalyst inlet temperature.

c. 40 CFR §63.6595 of the RICE NESHAP required the Permittee to be in compliance with the emission and operating limitations for the Engines upon startup. However, 40 CFR §63.6640 of the RICE NESHAP states that “deviations from the emission or operating limitations that occur during the first 200 hours of operation from engine startup (engine burn-in period) are not violations.”

d. To monitor the catalyst inlet temperatures for the Engines, 40 CFR §63.6640 of the RICE NESHAP requires the Permittee to install, maintain, and operate a continuous parameter monitoring system to continuously record the inlet temperature of the catalyst and reduce the data to 4-hour rolling averages.

e. 40 CFR §63.6650 of the RICE NESHAP requires the Permittee to submit semiannual compliance reports for the Engines for the periods of January 1 – June 30 and July 1 – December 31 of each year following the compliance date. Each report must be postmarked no later than July 31st or January 31st following the end of each semiannual reporting period. 40 CFR §63.6650(c) specifies the required content of each report.

5. On November 14, 2006, the Department issued a Temporary Authorization to Operate for the Engines, which authorized the Permittee to commence operation of the Engines.

6. On June 27, 2008, the Department sent a letter to the Permittee stating that the Permittee had failed to submit reports in accordance with the requirements of 40 CFR §63.6650. The letter requested that the Permittee submit a report for each of the reporting periods since November 14, 2006 (November 14, 2006 through December 31, 2006; January 1, 2007 through June 30, 2007; July 1, 2007 through December 31, 2007; and January 1, 2008 through June 30, 2008). The Department requested that the reports be submitted by July 31, 2008.

7. On September 2, 2008, the Department received the requested semiannual compliance reports from the Permittee. The reports indicated that the installations of the continuous parameter monitoring systems to monitor and record the inlet temperature of the catalysts for the Engines were not completed until August 22, 2008 and that the Permittee operated one of the Engines (identified as Engine No. 492 by the Permittee) without the oxidation catalyst installed for 25.6 hours beyond the allowed 200-hour burn in-period. In addition, the Department determined that these reports were incomplete because all of the information required by 40 CFR §63.6650(c) was not included. Subsequent reports were received on November 4, 2008, which contained all of the required information.

8. On September 25, 2008, the Department issued a Notice of Violation (hereinafter, "NOV") to the Permittee for failing to submit reports in accordance with the requirements of 40 CFR §63.6650, for failing to properly monitor the Engines in accordance with 40 CFR §63.6640, and for failing to comply with the applicable emission limitation in accordance with 40 CFR §63.6600 (i.e. 93% reduction in CO emissions) for Engine No. 492. The Department requested that the Permittee submit a written response to the NOV by October 15, 2008. However, due to postal service

disruptions caused by Hurricane Ike, the NOV was not delivered to the Permittee until October 14, 2008. Therefore, the Department granted the Permittee an extension to the submittal deadline.

9. On November 4, 2008, the Department received the Permittee's response to the NOV. The response indicated that the Permittee operated Engine No. 492 without the oxidation catalyst for an additional 48 hours beyond the allowed 200-hour burn-in period during the period of January 1, 2007 through June 30, 2007. In addition, the Permittee reported that another one of the Engines (identified as Engine No. 493 by the Permittee) had been operated without the oxidation catalyst for 20.3 hours beyond the allowed 200-hour burn-in period during the period of January 1, 2007 through June 30, 2007.

10. On February 1, 2009, the Department received the Permittee's semiannual compliance report for the period of July 1, 2008 through December 31, 2008. The report indicated that the Permittee did not have records of the catalyst inlet temperature readings or 4-hour block averages for Engine No. 492 for the period of September 24, 2008 through November 4, 2008, due to a hard drive failure. Therefore, the Permittee is not able to demonstrate continuous compliance with the applicable operating limitation for that period.

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

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

CONTENTIONS OF THE PERMITTEE

As a general matter, the Permittee neither admits nor denies the Department's allegations and has noted that the Permittee has no relevant history of violations. Specifically, the Permittee alleges as follows:

A. ADDITIONAL RELEVANT FACTS:

(1) On November 14, 2006, the Department issued the Permittee, Freebird Gas Storage, LLC, collectively owned, directly or indirectly, by Freebird SHA, LLC, Freebird Assets, Inc., Denham Commodity Partners Fund IV, LP, Multifuels, LP, ("Multifuels"), and Second Helping, Inc., a Temporary Authorization to operate each of the engines. On May 12, 2006, Multifuels entered into a Services Agreement with Permittee to, among other things, prepare and submit reports for the purpose of government compliance.

(2) On January 31, 2007 Multifuels failed to submit semiannual report as required by RICE MACT for the period November 14, 2006 thru December 31, 2006. On July 31, 2007 Multifuels failed to submit semiannual report as required by RICE MACT for the period January 1, 2007 thru June 30, 2007.

(3) On August 22 & 23 2007 the initial performance test, as approved by the Department's representative, were performed for all three engines (C-492, C-493, and C-494).

(4) On September 18, 2007 the initial test report was submitted to the Department showing the engines to be in compliance.

(5) On December 10, 2007 Enstor, Inc. became the indirect owner of Permittee by acquiring all the membership interests of Freebird SHA, LLC (the direct partner of Permittee) from Multifuels, Second Helping, Inc. and indirectly, by acquisition

of Freebird Assets, Inc., Denham Commodity Partners Funds IV, LP. Upon the acquisition by Enstor, Inc., Enstor Operating Company, LLC ("Enstor"), a wholly owned subsidiary of Enstor, Inc. became the manager of Permittee to act for and on behalf of the Permittee.

(6) On February 19 & 20, 2008 Enstor conducted performance testing for all three engines in the presence of the Department's representative. On March 14, 2008 Enstor submitted test reports to the Department and the engines were found to be in compliance.

B. SERIOUSNESS OF THE VIOLATION: The severity of the violation is mitigated by the fact that (1) during the period while operating without the catalyst, the resultant excess emissions from Engine Nos. 492 were 0.13 tons of NOx, 0.48 tons of CO, 0.12 tons of VOCs, 0.09 tons of total HAPs and resultant excess emissions from Engine No. 493 were 0.04 tons of NOx, 0.13 tons of CO, 0.03 tons of VOCs, and 0.02 tons of total HAPs, and (2) the total hours of run time represented approximately 13% of the total permitted operating hours and it can be concluded from semi annual performance testing and periodic monitoring and recording that, on a cumulative basis, there were no emissions in excess of allowable maximums during this period. The Permittee's failure to submit complete semiannual compliance reports in a timely manner are reporting violations.

C. STANDARD OF CARE: The Permittee exhibited a standard of care commensurate with regulatory standards and permit requirements since (1) following the transition of operations from Multifuels to Enstor, a continuous monitoring and recording system was implemented as quickly as possible to meet the Department's requirements; (2) there was frequent communication between Enstor and the Department regarding the

submission and content of reports and the implementation of the continuous monitoring and recording system; and (3) after implementing the continuous monitoring and recording system, catalyst temperature recording errors were caused by unexpected computer failure and such deviations were promptly reported to the Department.

CONTENTIONS OF THE DEPARTMENT

The Department neither admits nor denies Permittee's contentions. 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. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or 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 constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Department considers the Permittee's failure to install the oxidation catalyst within the required timeframe a serious violation in that it resulted in emissions in excess of the emission standard being released to the environment, although the Department is not aware of any irreparable harm to human health or the environment. The Department considers the Permittee's failure to install and operate continuous parameter monitoring systems for the Engines serious

violations, in that the Permittee was not able to demonstrate that the Engines were operating in continuous compliance with the applicable operating limitation for a period of approximately 3,677.9 hours of combined operation. The Permittee's failure to submit complete semiannual compliance reports in a timely manner is a reporting violation, and the Department is not aware of any irreparable harm to human health or the environment as a result.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care commensurate with applicable regulatory standards and permit requirements since corrective action was not implemented until the problems were identified by the Department.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is unaware of any significant economic benefit that the Permittee may have achieved as a result of the above-mentioned violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts taken by the Permittee to minimize or mitigate the effects of the violations upon the environment. All equipment required to comply with the regulations is currently installed and operating at the facility.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee does not have a history of previous air violations at this facility.

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.

CONSENT 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. (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 the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$25,000.00 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 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
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees that, immediately upon the effective date of this Consent Order, it will take measures to ensure that all air pollution control devices and

capture systems shall be properly maintained and operated in a manner as to minimize emissions of air contaminants.

D. The Permittee agrees to comply with the terms, limitations, and conditions of the Permit and Department regulations immediately upon the effective date of this Consent Order and each and every day hereafter, until such time that the Permit is renewed, revoked, or voided.

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. The parties agree that this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are alleged in this Consent Order.

G. The Permittee 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, 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.

I. 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 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 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.

J. 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.

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

L. The Department and the Permittee agree that final approval and entry into this Consent 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 Consent Order.

M. The Department and the Permittee agree 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.

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

O. The Department and the Permittee agree that, 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 obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**FREEBIRD GAS STORAGE, LLC,
PERMITTEE**

By: Enstor Operating Company, LLC,
its manager

Matt Morrow
(Signature of Authorized Representative)

MATT MORROW
(Printed Name)

PRESIDENT
(Printed Title)

05/01/09
Dated Signed

James J. Schoppe
(Signature of Authorized Representative)

James J. Schoppe
(Printed Name)

Director, Business Unit Controller
(Printed Title)

5/1/09
Dated Signed

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

Nancy Elliott
Onis "Trey" Glenn, III
Director

6-18-2009
Date Executed