



Alabama Department of Environmental Management
adem.alabama.gov

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March 5, 2015

CERTIFIED MAIL NO. 91 7108 2133 3935 0365 1583

Mr. Bruce Painter
Director LNG Operations
Alabama Gas Corporation
605 Richard Arrington Blvd. North
Birmingham, Alabama 35203

Dear Mr. Painter:

**RE: Consent Order No. 15-043-CAP
Facility No. 205-0008
Alabama Gas Corporation
Coosada LNG Facility**

Please find enclosed ADEM Consent Order No. 15-043 CAP which requires Alagasco 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 Alabama Gas Corporation and the Department. Please refer to Order Items A and B for the dates by which the monetary penalties must be paid. Also, please refer to Order Item C for the compliance schedule.

If you have any questions concerning this matter, please contact Chris Ailor at (334) 271-7813 or ceailor@adem.state.al.us.

Sincerely,

Ronald W. Gore, Chief
Air Division

Enclosure

cc: Sean Sibley, Office of General Counsel (w/ enclosure)



**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Alabama Gas Corporation)

Coosada, Elmore County, Alabama)

Air Facility ID No. 205-0008)

CONSENT ORDER NO. 15-043-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and Alabama Gas Corporation (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.

STIPULATIONS

1. The Permittee is the owner and/or operator of a liquefied natural gas plant (hereinafter, “the Facility”) located in Coosada, Elmore 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 April 12, 2010, the Department issued Air Permit No. 205-0008-X006 (hereinafter, "the Permit") to the Permittee for a 930 Hp Caterpillar natural gas-fired generator (hereinafter, "Unit No. X006").

5. Proviso No. 18 of the Permit states that "This unit is an affected source under 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, and shall comply with all applicable requirements of the subpart and the applicable requirements of 40 CFR Part 63, Subpart A, General Provisions."

6. The requirements specified in 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, (hereinafter, "Subpart ZZZZ") include:

(a) §63.6603 and Table 2d of Subpart ZZZZ requires the Permittee to install a non-selective catalytic reduction (NSCR) device to reduce HAP emissions from the stationary rice.

(b) §63.6630 and Table 5 of Subpart ZZZZ requires the Permittee to conduct an initial performance test in accordance with §63.6630(e) to show that the average reduction of emissions of CO is 75 percent or more, **or** the average concentration is less than or equal to 270 ppmvd at 15 percent O₂; or the average reduction of emissions of THC is 30 percent or more and **either** install and operate a CPMS to continuously monitor catalyst inlet temperature according to the requirements in §63.6625(b) **or** install and operate equipment to automatically shut down the engine if the catalyst inlet temperature exceeds 1250 °F.

(c) §63.6645 of Subpart ZZZZ requires the Permittee to prepare an Initial Notification to the EPA Administrator within 120 days of installing the engine. The notification shall contain the information in §63.9(b)(2).

(d) §63.6645 of Subpart ZZZZ requires the Permittee to notify the EPA Administrator and the Air Division in writing of the intention to conduct a performance test at least 60 calendar days before the

performance test is scheduled to begin.

(e) §63.6645 of Subpart ZZZZ requires the Permittee to submit a notification of compliance status to the EPA Administrator and the Air Division no later than 60 days following the completion of the initial performance test.

(f) §63.6655(a) requires the permittee to keep records of each notification and documentation supporting any initial notification or notification of compliance, records of occurrence and duration of each malfunction of air pollution control and monitoring equipment, records of performance tests and performance evaluations, records of actions taken during periods of malfunction to minimize emissions including actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation. The permittee is required to keep records of maintenance conducted on the stationary RICE and after-treatment control device (if any) in order to demonstrate that the RICE is operated and maintained in accordance with the permittee's maintenance plan.

(g) The permittee is required to install a NSCR, therefore, the permittee shall submit a Compliance Report semiannually in accordance with the requirements of §63.6650 and Table 7 of Subpart ZZZZ. The permittee is required to submit Semiannual Compliance Reports to the EPA Administrator and the Air Division no later than January 31st and July 31st of each year for the semiannual reporting periods of January 1 through June 30th and July 1st through December 31st, respectively. No report shall be required for any semiannual period in which no annual compliance demonstration is conducted.

DEPARTMENT'S CONTENTIONS

7. On September 12, 2013, Department personnel conducted an air inspection of the Facility and discussed the compliance date of October 19, 2013, and the equipment standards, operating limitations, testing requirements, continuous monitoring requirements and reporting requirements of Subpart ZZZZ for Unit Nos. X006 and X007.

8. The Permittee shutdown Unit No. X007 on October 19, 2013 until emission controls could be installed, in order to stay in compliance with Subpart ZZZZ; however, Unit

No. X006 remained in operation.

9. On August 28, 2014, the Department conducted an air inspection of the Facility and discovered that Unit No. X006 was operating and had operated for a total of 175.5 hours since August 2013 and that no Non-Selective Catalytic Reduction (NSCR) device, which is the prescribed control device, had been installed on Unit No. X006.

10. On September 11, 2014, the Permittee submitted complete Air Permit applications indicating that Unit No. X006 was not in compliance with all applicable air pollution rules and regulations.

11. On October 1, 2014, the Department issued a letter to the Permittee requesting information on the compliance status of Unit No. X006, including why the unit had been operating without a NSCR installed after the compliance date of October 19, 2013.

12. 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 \$25,000.00 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

operation of Unit No. X006 without the required control device and its failure to comply with the testing, notification, inspection, recordkeeping and reporting requirements of Subpart ZZZZ to be serious violations.

B. THE STANDARD OF CARE: By not installing the air pollution control device required by Subpart ZZZZ and not complying with the testing, notification, inspection, recordkeeping and reporting requirements of Subpart ZZZZ, the Permittee did not exhibit a standard of care commensurate with the requirements of the Alabama Pollution Control Act and ADEM Administrative Code.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that the Permittee did not derive any significant economic benefit from the alleged violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects to mitigate as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has no history of similar violations with the Department 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 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., *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 (see Attachment A, which is made a part of the Department's contentions).

14. 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

15. 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.

16. Permittee admits that there has been a great deal of uncertainty over the applicability of Subpart ZZZZ to this backup generator, Unit No. X006. Although this backup generator is ordinarily used only in emergency situations, it is occasionally used in ordinary operations. It is Permittee's contention that Subpart ZZZZ does not apply to certain existing emergency generators (<http://www.epa.gov/ttn/atw/icengines/>), although the generators must meet Subpart ZZZZ emergency engine operational requirements, so there was confusion over the applicability of Subpart ZZZZ to Unit No. X006.

17. At the time of the inspection on August 28, 2014, the backup generator was being used in an emergency situation because the utility feed breaker to the plant had failed and the generator was running to provide backup electrical power to properly maintain LNG storage and safety. The generator was taken off line as soon as utility power was restored.

18. Unit No. X006 has only been put in operation for approximately 356 hours since October 19, 2013, with 182.1 hours used for emergency conditions and 17.1 hours used for compliance test runs.

19. In addition, it is Alagasco's contention that Unit No. X006 has at all times been included in the permits issued by ADEM and Permittee has complied with the specific limitations explicitly set forth in those permits.

20. Permittee has been delayed in getting this unit into compliance by several factors, including, but not limited to:

(a) Determining whether the generator was "remote" or "non-remote" for purposes of determining whether an exemption to the application of the rule would apply; and

(b) Determining whether the generator is a "rich burn" or a "lean burn" unit in order to determine the proper catalyst to install. That determination was finally made through multiple consultations over several months with the manufacturer, Caterpillar, who informed Alagasco on July 1, 2014, that the generator was shipped from Caterpillar in 1972 as a rich burn generator. Even after July 1, 2014, there was internal miscommunication regarding whether this generator is rich burn or lean burn, which led to communications and filings with ADEM by Permittee's consultant, Tim Floyd of CFM Group, wherein it was stated that the generator was a lean burn generator.

21. As part of the enforcement process, Alagasco unilaterally agreed to operate the generator only in emergency situations before the NSCR is installed.

22. The installation of the NSCR has been completed, as of December 19, 2014, and Alagasco is in the process of scheduling the performance testing.

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 has determined 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 \$15,000.00 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. 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 to bring Unit No. X006 into compliance with the terms, limitations, and conditions of the Permit, the Department's regulations, and Subpart ZZZZ. Upon the effective date of this Consent Order and every day thereafter, based on the following compliance schedule:

- i. Immediately – Submit Initial Notification for the 930 Hp Caterpillar

natural gas-fired generator to the Department and the EPA;

- ii. No later than March 31, 2015 – Conduct the initial performance test on NSCR unit, providing adequate notification to the Department and the EPA (at least 60 days prior to the performance test);
- iii. No later than May 31, 2015 – Submit Compliance Certification to the Department and the EPA in accordance with Subpart ZZZZ;
- iv. No later than July 31, 2015 – Submit Semi-Annual Compliance Report for the reporting period of January 1 – June 30 to the Department and the EPA in accordance with Subpart ZZZZ

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. 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 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 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.

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 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.

ALABAMA GAS CORPORATION



(Signature of Authorized Representative)

BRUCE A. PAINTER

(Printed Name)

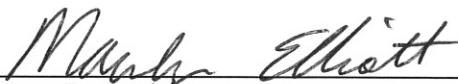
DIRECTOR - LNG OPER.

(Printed Title)

1-9-2015

Date Signed

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**



Lance R. LeFleur
Director

3-5-2015

Date Executed

Attachment A

Alabama Gas Corporation

Coosada, Elmore County

ADEM Air Facility ID No. 205-0008

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to submit Initial Notification	1	\$1,000	\$2,000	\$0	
Operating engine without control device per the MACT	1	\$6,000	\$2,000	\$0	
Failure to demonstrate initial compliance with emission limitations	1	\$1,000	\$1,000	\$0	
Failure to comply with recordkeeping/reporting requirements	1	\$1,000	\$1,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$9,000	\$6,000	\$0	\$15,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) Enter at Right	\$0

Economic Benefit (+)	
Amount of Initial Penalty	\$15,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$15,000

Footnotes

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