

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

February 11, 2014

CERTIFIED MAIL 91 7199 9991 7032 3213 7819

Mr. Frank Flegel
Chief Operations Officer
Spirit Express, LLC
Post Office Box 929
Dalton, Georgia 30722

RE: Consent Order No. 14-042-CUST
Spirit Express, LLC

Dear Mr. Flegel:

Enclosed please find **Consent Order No. 14-042-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 February 11, 2014. **Payment of the civil penalty in the amount of \$1,750 is due on or before March 28, 2014** and should be submitted to the ADEM Office of General Counsel at the above Montgomery address.

Pursuant to the terms of the consent order, all cited violations should now be corrected.

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/rh

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
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)
)
Spirit Express, LLC)
Gadsden, Etowah County, Alabama)
)

CONSENT ORDER

No. 14-042-CUST

PREAMBLE

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code, as amended; the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code, as amended; 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. Spirit Express, LLC (hereinafter "the Owner") is a regulated substance deliverer.
2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code, as amended.
3. Pursuant to § 22-22A-4(n), Ala. Code, as amended, 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, as amended.
5. Based upon an inspection 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, a regulated substance deliverer, delivered a regulated substance to an underground storage tank facility that was under delivery prohibition.

8. The regulated substance was delivered on September 10, 2013, to Rainbow Star Food Mart located at 2065 Highway 77, Gadsden, Etowah County, Alabama while they were on delivery prohibition. The facility ID No. of Rainbow Star Food Mart is 22635-055-002889.

9. 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.

10. 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, 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 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/Deliverer 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/Deliverer 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/Deliverer does have a history of previous violations.

F. Ability to Pay:

The Owner/Deliverer 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, as amended, as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$1,750.00 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>
Unauthorized delivery 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, within forty-five days of the effective date of this Consent Order, the Owner shall pay to the Department a civil penalty in the amount of \$1,750.00 for the violations cited herein. Failure to pay the civil penalty within forty-five days of the effective date of this Consent Order 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.

K. 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)

FRANK R. FLOBEL, President

(Please Print Name and Title of Authorized Officer)

Spirit Express, LLC

Dated: December 20, 2013



Lance R. LeFleur,
Director

Dated: 2.11.14

ATTACHMENT A

Penalty Calculation Worksheet

Spirit Express, LLC
PO Box 929
Dalton, GA 30722

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
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	\$1,000
Totals:	1	\$1,250	\$1,250	\$1,000

Economic Benefit*:	\$0
Mitigating Factors*:	\$0
Ability to Pay*:	\$0
Other Factors:	-\$1,750

Total Civil Penalty: \$1,750

Footnotes

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

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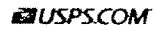
Available Actions

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Tracking History		
February 19, 2014 , 9:45 am	Delivered	DALTON, GA 30720
February 18, 2014 , 9:44 am	Available for Pickup	DALTON, GA 30722
February 18, 2014 , 8:46 am	Sorting Complete	DALTON, GA 30720
February 18, 2014 , 7:45 am	Arrival at Unit	DALTON, GA 30720
February 17, 2014 , 3:36 am	Processed through USPS Sort Facility	CHATTANOOGA, TN 37421
February 17, 2014	Depart USPS Sort Facility	CHATTANOOGA, TN 37421
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rharrison@adem.state.al.us

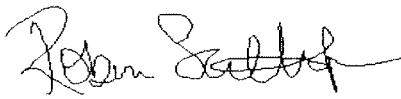
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Date: February 19, 2014

Ragan Harrison:

The following is in response to your February 19, 2014 request for delivery information on your Certified Mail™ item number 9171999991703232137819. The delivery record shows that this item was delivered on February 19, 2014 at 9:45 am in DALTON, GA 30720. The scanned image of the recipient information is provided below.

Signature of Recipient : 
Robin Satterfield

Address of Recipient : 

Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,
United States Postal Service