

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

December 14, 2011

CERTIFIED MAIL NO.: 91 7108 2133 3936 5742 8857
RETURN RECEIPT REQUESTED

Mr. David Bissmeyer
Vice President
Ventex Operating Corporation
3141 Hood Street, Suite 700
Dallas, TX 75219

Re: **Final Consent Order**
Ventex Operating Corporation
ATIC 27-8 Oil & Gas Production Facility (Facility No.: 502-0088)
Odom 24-14/Kelly 24-10 Oil & Gas Production Facility (Facility No.: 502-0088)

Dear Mr. Bissmeyer:

Please find enclosed ADEM Consent Order No. 12-045-CAP which requires Ventex Operating Corporation 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 Ventex Operating Corporation and the Department. Please note that the payment is due within 45 days of the effective date of the Order.

If you have any questions concerning this matter, please contact Harlotte Bolden-Wright at (334) 274-4159 in Montgomery.

Sincerely,

Ronald W. Gore, Chief
Air Division



RWG/hmbw

Enclosure

cc: Thomas 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**

<u>IN THE MATTER OF:</u>)	
)	
Ventex Operating Corporation)	CONSENT ORDER NO. : 12-045-CAP
Barnett Crossroad, Escambia County, Alabama)	
)	
<u>Air Facility ID Nos. 502-0086 and 502-0088</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” or “ADEM”) and Ventex Operating 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 operates the ATIC 27-8 No. 1 Oil and Gas Production Well and the Odom 24-14/Kelly 24-9 Oil and Gas Production Facilities (ADEM Air Facility ID No. 502-0086 and 502-0088, respectively) (hereinafter, the “Facilities”) located near Barnett Crossroads in Escambia 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. The Department issued Major Source Operating Permit Nos.: 502-0086 and 502-0088 (hereinafter, “the Permits”) on July 1, 2007 to the Permittee for the Facilities.

5. Proviso 1(a) of the compliance and performance test methods and procedures section of the Permits require that the Permittee test the hydrogen sulfide (H₂S) concentration in each process stream that may be burned in the Facilities’ flares at a frequency of no less than once each month.

6. Proviso 1(b) of the compliance and performance test methods and procedures section of the Permits require that the Permittee test a representative sample of the sour gas stream combusted in either the heater treater or flare, to determine the Btu heat content, the volatile organic compound (VOC) content, and the molecular weight of each stream at a frequency of no less than once every three calendar months.

7. Proviso 2(b) of the recordkeeping and reporting requirements section of the Permits require that the Permittee submit periodic monitoring reports (hereinafter, “PMR”) to the Department which state whether or not deviations from the permit requirements occurred during the reporting period. The reports are submitted on a semi-annual calendar basis.

8. Proviso 12(b) of the general permit provisos section of the Permits require that the Permittee certify the compliance status of each permit requirement in their Annual Compliance Certification (hereinafter, “ACC”) for the period covering July 1 through June 30.

DEPARTMENT’S CONTENTIONS

9. On February 24, 2011, the Department conducted an inspection of Permittee’s records located at the Kelly 24-9 Oil and Gas Production Facility. The reviewed records

indicated that testing had not been conducted as required by the Permits during calendar year 2009 and 2010.

10. On February 25, 2011, the Department requested that the Permittee provide records of the monthly H₂S content tests and the quarterly gas analyses covering the period from January 2009 through December 2010.

11. On March 29, 2011, the Permittee submitted to the Department copies of all of the available test records for the Facilities covering the period from January 2009 through December 2010. The records indicated that the Permittee had missed 44 monthly H₂S testing periods and 14 quarterly gas analyses which would demonstrate the Btu heat content, VOC content, and molecular weight of the gas capable of being sent to one of the Facilities' flares.

12. On May 27, 2011, the Department issued the Permittee a Notice of Violation (hereinafter, "NOV") for failure to perform the required monthly and quarterly testing, for not reporting deviations from the Permit requirements in the semi-annual PMR, and for certifying in the ACC reports that the required testing had been performed as required by the Permits.

13. In the NOV response to the Department, dated June 21, 2011, the Permittee submitted nine copies of gas analyses that were not included in the March 29, 2011 records. The Permittee stated that the nine analyses were not submitted during the initial request because these records were being maintained in its Dallas office. The submitted records indicated that the Permittee missed 33 monthly H₂S testing periods instead of the 44 originally determined and nine quarterly gas analyses instead of the 14 originally determined.

14. The Permittee's response to the NOV cited poor recordkeeping and file management, poor communication between the Permittee and its testing team, and inconsistencies in production for one of the wells as reasons why the monthly and quarterly testing was not performed as required by the Permits.

15. The Permittee did not report any deviations from the testing requirements in its semi-annual PMR for the two reporting periods in 2009 and the two reporting periods in 2010 for

both the ATIC 27-8 No. 1 Oil and Gas Production Well and the Odom 24-14/Kelly 24-9 No. 1 Oil and Gas Production Facilities.

16. In response to the NOV, the Permittee alleged that no deviations were reported in the 2009 and 2010 semi-annual PMR because it believed that if testing could not be performed due to the well not producing or the well not producing long enough for a sample to be taken, a deviation event had not occurred.

17. The Permittee certified that the Facilities were continuously in compliance with the testing requirements and the recordkeeping and reporting requirements of the Permits in their 2009 and 2010 ACC for both the ATIC 27-8 No. 1 Oil and the Odom 24-14/Kelly 24-9 No. 1 Oil and Gas Production Facilities.

18. The Permittee's response to the NOV also explained that it certified in the 2009 and 2010 ACC that the Facilities were in continuous compliance with the testing requirements because it believed that the testing requirements had been complied with to the extent practically possible.

19. On August 2, 2011, the Permittee submitted to the Department the semi-annual PMR for both the ATIC 27-8 No. 1 Oil and Gas Production Facility and the Odom 24-14/Kelly 24-9 No. 1 Oil and Gas Production Facilities. These reports covered the reporting period from January 1, 2011 through June 30, 2011. The reports indicated that the Permittee missed 12 monthly H₂S testing periods and four quarterly gas analyses during this reporting period.

20. 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(s), 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 failure to perform the required testing, failure to report deviations in the semi-annual PMR, and failure to accurately represent the compliance status of the Facilities in the ACC reports to be serious violations. The monthly and quarterly test results are necessary to perform calculations which demonstrate that the facility-wide permit limits are being met. However, the Department is not aware of any irreparable harm to the environment resulting from these violations.

B. THE STANDARD OF CARE: The Permittee failed to exhibit a sufficient standard of care by missing 58 required periods of testing and not performing a thorough review of the Facilities records to verify their accuracy.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department believes that the Permittee derived an economic benefit from not performing the monthly and quarterly testing in calendar year 2009, 2010, and the first half of 2011.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts by the Permittee to minimize or mitigate the effects of the violations on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued a NOV to the Permittee on September 5, 2006 for an unrelated violation.

F. THE ABILITY TO PAY: The Department has considered the Permittee's allegations of circumstances that impact its ability 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.

21. 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 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).

22. 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

23. 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. 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 Permittee of liability.

24. According to Permittee's response to the NOV, Permittee has implemented strict guidelines for consistent monthly sampling, to include a report if the well(s) is/are non-operational.

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 Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$35,000 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 comply with all requirements of ADEM Admin. Code div. 335-3 and the Permits immediately upon the effective date of this Order and continuing thereafter.

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, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order 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.

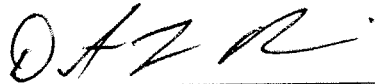
M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

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.

VENTEX OPERATING CORPORATION

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

DAVID BISSMEYER


(Printed Name)

VICE PRESIDENT

(Printed Title)

10/24/11

Date Signed



Lance R. LeFleur

Director

12/14/2011

Date Executed

ATTACHMENT A

**Ventex Operating Company
Barnett Crossroads, Escambia County
Facility Nos. 502-0086 & 502-0088**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to conduct monthly H ₂ S testing	45	\$ 12,000.00	\$ 4,000.00	\$ -
Failure to conduct quarterly VOC content, gas heat content, and gas molecular weight testing	13	\$ 4,000.00	\$ 1,500.00	\$ -
Failure to report deviations in semi-annual reports	8	\$ 8,000.00	\$ 2,500.00	\$ -
Inaccurately certifying that testing was performed	4	\$ 12,000.00	\$ 4,000.00	\$ -
<i>TOTAL</i>	<i>70</i>	<i>\$ 36,000.00</i>	<i>\$ 12,000.00</i>	<i>\$ -</i>

Economic Benefit

Mitigating Factors \$ -
Ability to Pay \$ (13,000)
Other Factors \$ -
CIVIL PENALTY \$ 35,000

Footnotes

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

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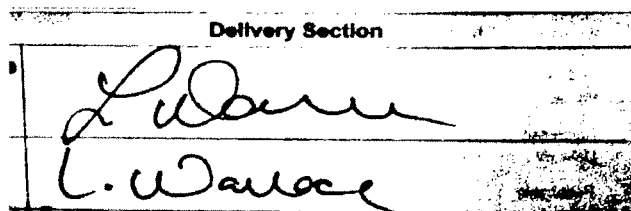


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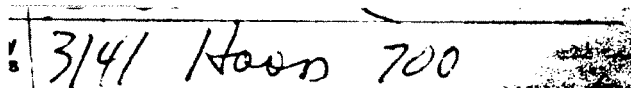
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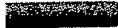
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