

MT  
LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
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Alabama Department of Environmental Management  
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Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

August 10, 2011

**CERTIFIED MAIL 91 7108 2133 3935 0352 3750**

Mr. Danny Bowers  
D & M, L.L.C.  
1200 Alton Drive  
Birmingham, Alabama 35210



**RE: Consent Order No. 11-117-CUST**  
Rocky Ridge Chevron / McCullough Snappy Service Oil Company, Inc.

Dear Mr. Bowers:

Enclosed please find Consent Order No. 11-117-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 August 10, 2011. **Payment of the civil penalty in the amount of \$10,500 is due on or before September 26, 2011** 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.

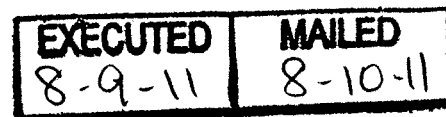
Sincerely,

Wm. Gerald Hardy, Chief  
Land Division

WGH/SSM/MLD/rh

Enclosure

C: Wm. Gerald Hardy, Chief, Land Division  
Sonja Massey, Chief, Groundwater Branch, ADEM  
Todd Carter, Associate General Counsel, ADEM  
Lee Davis, Chief, UST Compliance Unit, 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:

D & M, L.L.C.  
Rocky Ridge Chevron  
UST Facility ID No. 21571-073-018809  
McCullough Snappy Service Oil Company, Inc.  
UST Account No. 13343  
Vestavia, Jefferson County, Alabama

**CONSENT ORDER**

**No. 11-117-CUST**

**PREAMBLE**

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.); 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. D & M, L.L.C. (herinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at Rocky Ridge Chevron, 2544 Rocky Ridge Road, Vestavia, Jefferson County, Alabama, designated as ADEM Facility I.D. Number 21571-073-018809. D & M, L.L.C. is also the owner of McCullough Snappy Service Oil Company, Inc., UST Account No. 13343, a regulated substance deliverer located in Birmingham, Jefferson County, Alabama.

2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rpl.Vol.), 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 (2006 Rpl.Vol.).

5. Based upon records submitted on February 16, 2011 of the UST facility, 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, as McCullough Snappy Service Oil Company, Inc., delivered fuel to Rocky Ridge Chevron, an underground storage tank facility that was under delivery prohibition and the Owner, as D & M, L.L.C., accepted delivery of a regulated substance to an underground storage tank facility that was under delivery prohibition.

8. A Notice of Delinquency (NOD) dated April 22, 2010, was issued by the Department requiring the Owner to submit spill catchment basin test, results of sump inspections, corrosion protection test results and annual line leak detector tests.

9. On June 4, 2010, upon the Owner's failure to respond to the NOD dated April 22, 2010, the Department issued a Notice of Violation (NOV) requiring the Owner to submit spill catchment basis test, results of sump inspections, corrosion protection test results and annual line leak detector tests.

10. On July 12, 2010, upon the Owner's failure to respond to the NOD dated April 22, 2010 and the NOV dated June 4, 2010, the Department issued a Notice of Proposed Delivery Prohibition requiring the Owner to submit to the Department spill catchment basin tests, results of sump inspections for all pressurized piping sumps, corrosion protection results and annual line leak detector tests.

11. On August 11, 2010, the Department placed the facility on delivery prohibition.

12. On October 27, 2010, based on the Department's receipt of spill basin and line leak detector, sump inspections and a notification form indicating the facility has fiberglass coated steel tanks the facility was removed from the Delivery Prohibition List.

13. On February 16, 2011, a Department review of records submitted by the facility determined that the facility received fuel on August 20, 2010 while still on delivery prohibition. There were twenty three deliveries between August 12, 2010 and October 22, 2010.

14. 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.

15. 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**

16. Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rpl. 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 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/Operator 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/Operator 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/Operator does not have a history of previous violations.
- (f) Ability to Pay:  
The Owner/Operator 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 (2006 Rplc. Vol.), as well as the need

for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$10,500.00 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>Maximum Penalty for Violation Type</u>
Unauthorized receipt of fuel while on delivery prohibition and delivery of regulated substance while on delivery prohibition.	\$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 issuance of this Consent Order, the Owner shall pay to the Department a civil penalty in the amount of \$10,500.00 for the violations cited herein. Failure to pay the civil penalty within forty-five days after the issuance 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, addressed as follows:

**Office of General Counsel**  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

B. 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.

C. 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.

D. That the Owner is not relieved from any liability upon the failure to comply with any provision of the Consent Order.

E. 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.


F. 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.

G. That this Consent Order shall not affect the Owner's obligation to comply with any Federal, State, or local laws or regulations.

H. 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.

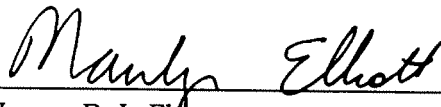
I. That any modifications of this Consent Order must be agreed to in writing signed by both parties.

J. 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)  
D J Bowers  
(Please Print Name and Title of Authorized Officer)

D & M, L.L.C.

Dated: 6/24/11

  
Lance R. LeFleur,  
Director

Dated: 8.9.11

# ATTACHMENT A

## Penalty Calculation Worksheet

D&M, LLC  
1200 Alton Drive  
Birmingham, AL 35210  
Rocky Ridge Chevron  
2544 Rocky Ridge Road, Vestavia  
UST ID No. 21571-073-018809

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	\$5,000	\$5,000	\$0
2nd thru 23rd delivery	22	\$2,750	\$2,750	\$0
<b>Totals:</b>		\$7,750	\$7,750	\$0

Economic Benefit\*: \$0  
Mitigating Factors\*: \$0  
Ability to Pay\*: \$0  
Other Factors\*: -\$5,000

**Total Civil Penalty: \$10,500**

### Footnotes

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