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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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JAMES W. WARR
DIRECTOR (Acting)

BOB RILEY
GOVERNOR

January 20, 2005

CERTIFIED MAIL NO. 7003 3110 0004 0267 7407
RETURN RECEIPT REQUESTED

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Laboratory: 277-6718
Mining: 394-4326
Education/Outreach: 394-4383

Mr. Norman E. Dunkin
Cougar Oil Inc.
P O Box 1800
Selma, Alabama 36701

RE: **Consent Order**
Trailer Serial # 4FK023812
Selma (Dallas County)
Permit No. 104-T004-X001

Dear Mr. Dunkin:

Please find enclosed ADEM Consent Order No. 05-034-CAP which requires Cougar Oil Inc. 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 Cougar Oil Inc. and the Department. Please refer to Order Items A., C., and D. for the dates by which the monetary penalties must be paid.

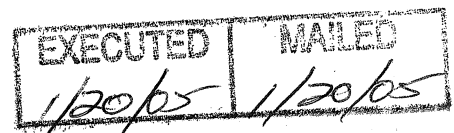
If you have any questions concerning this matter, please contact Nikki Foster at (334) 271-7865 in Montgomery.

Sincerely,

Ronald W. Gore, Chief
Air Division

Enclosure

cc: Olivia Rowell, Office of General Counsel



Birmingham Branch
110 Vulcan Road
Birmingham, Alabama 35209-4702
(205) 942-6168
(205) 941-1603 [Fax]

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, Alabama 35603-1333
(256) 353-1713
(256) 340-9359 [Fax]

Mobile Branch
2204 Perimeter Road
Mobile, Alabama 36615-1131
(251) 450-3400
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4171 Commanders Drive
Mobile, Alabama 36615-1421
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**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In the Matter Of:)
)
)

Cougar Oil, Inc.)

Gasoline Tank Truck Permit No. 104-T004-X001)

Selma, Dallas County, Alabama)
_____)

CONSENT ORDER NO.05- 034-CAP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §22-22A-1 through 22-22A-16, Code of Alabama, (1975), as amended, and the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama, (1975), as amended, and the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Alabama Department of Environmental Management (hereinafter, the "Department") makes the following FINDINGS:

1. **Cougar Oil, Inc.** (hereinafter, "Cougar") is the permitted owner and/or operator of a gasoline transport vessel (hereinafter "tank truck") operating in Selma, Dallas County, Alabama, operating under the authority of ADEM Air Permit 104-T004-X001 (2004 ADEM Air Sticker #00212) issued on September 23, 1991.

2. The Department is a duly constituted agency of the State of Alabama pursuant to §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended.

3. Pursuant to §22-22A-4(n), Code of Alabama (1975), as amended, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401

through 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended.

4. Pursuant to Permit Proviso No. 4 of Air Permit No. 104-T004-X001 and ADEM Admin Code R. 335-3-6-.20 (5) the owner/operator of the tank truck shall not permit the transfer of gasoline between a tank truck and the underground gasoline storage tanks without utilizing the vapor balance system.

5. On July 6, 2004, the Department observed Cougar delivering gasoline to an underground gasoline storage tank and noted that the vapor recovery hose was not connected to either the vapor recovery system on the truck or the underground gasoline storage tank. A coaxial boot was covering the vapor recovery port but no hose was connected to catch the escaping vapors.

6. On July 22, 2004, the Department issued a Notice of Violation (NOV) to Cougar, citing a violation of ADEM Admin Code R. 335-3-6-.20 (5) by not utilizing the vapor balance system.

7. On August 6, 2004, Cougar submitted a response to the NOV stating that the driver was given a written Behavioral Notice on this incident. They stated this employee was terminated on July 15, 2004, after additional violations of various company policies. In addition, Cougar stated they have reinforced their training and instructions to all of their drivers.

8. Also, on August 20, 2004, the Department observed Cougar delivering gasoline to an underground gasoline storage tank and noted that the vapor recovery hose coupler was not sealing tightly at the connection point which goes back into the truck. Gasoline vapors were observed while the driver was adjusting the fitting at the tank port.

9. Cougar neither agrees nor disagrees with the Findings presented in this Consent Order, but, in an effort to cooperate with the Department and to comply with the Alabama Air Pollution Control Act, Cougar has consented to the terms of this Consent Order.

10. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Consent Order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

ORDER

Based upon the foregoing FINDINGS and pursuant to §§22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-28-10(2) and 22-28-18, Code of Alabama, (1975), as amended, and with the consent of Cougar, it is hereby ORDERED:

A. That, not later than forty-five (45) days after the effective date of this Consent Order, Cougar shall pay to the Department a civil penalty in the amount of Four Thousand Dollars (\$4,000.00) for the violations cited herein. In determining the penalty amount herein the Department considered the statutorily prescribed factors set forth at Code of Alabama (1975) §22-22A-5(18)(c), as amended.

B. That all penalties due pursuant to this 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 36013-1463

C. That, immediately upon the effective date of this Consent Order and continuing thereafter, Cougar shall comply with ADEM Admin. Code R. 335-3-6-.20 (5), and Air Permit No. 104-T004-X001 by utilizing the facility and tank truck vapor balance system to control the

release of volatile organic compounds during the transfer of gasoline into the underground gasoline storage tanks.

D. 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. That, subject to the terms these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations cited in this Consent Order.

F. That Cougar is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. That, for purposes of this Consent Order only, Cougar 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. Cougar also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Cougar 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 Cougar, 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 be beyond the reasonable control of Cougar) and which delays or prevents performances by a date required by the Consent Order. Events such as unanticipated or increased

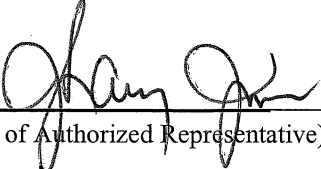
costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state or local permits shall not constitute *Force Majeure*.

H. 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 Cougar which would constitute possible violations not addressed in this Consent Order, then such future violations shall 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 Cougar 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.

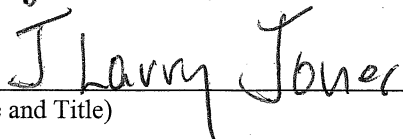
I. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Cougar does hereby waive any hearing on the terms and conditions of same.

Executed in duplicate with each part being an original.

Cougar Oil, Inc.



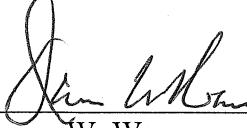
(Signature of Authorized Representative)



(Print Name and Title)

Date Signed: 11/23/04

**Alabama Department of
Environmental Management**



James W. Warr
Acting Director

Date Signed: 20 Jan 2005