

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

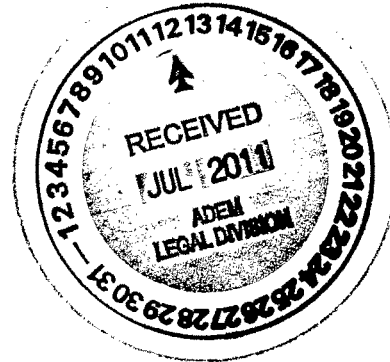
1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

July 11, 2011

CERTIFIED MAIL NO.: 91 7108 2133 5818 4295
RETURN RECEIPT REQUESTED

Mr. Emil H. Pawlik
Hughes Eastern Corporation
602 Northpark Drive, Suite A
Ridgeland, MS 39157

Re: **Final Consent Order**
Crosbys Creek Oil and Gas, LLC
Blackstone 31-7 No. 1 Well
Facility No.: 101-0019



Dear Mr. Pawlik:

Please find enclosed ADEM Consent Order No. 11-104-CAP which requires Crosbys Creek Oil and Gas, LLC 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 Crosbys Creek Oil and Gas, LLC and the Department. Please note that the assessed civil penalty 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>)	
)	
Crosbys Creek Oil & Gas, LLC)	CONSENT ORDER NO.: 11-104-CAP
Silas, Choctaw County, Alabama)	
)	
<u>Air Facility ID No. 101-0019</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 Crosbys Creek Oil and Gas, LLC (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 Blackstone 31-7 No. 1 Oil and Gas Production Well (ADEM Air Facility ID No. 101-0019) (hereinafter, the “Facility”) located five miles west of Silas, Choctaw 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 Permittee was issued Synthetic Minor Operating Permit No.: 101-0019-X001 (hereinafter, "the Permit") on November 25, 2008.

5. Proviso 18(e)(1)(i) of the Permit requires the Permittee to test the hydrogen sulfide (H₂S) concentration in each process stream that may be burned in the flare at a frequency of no less than once each month.

DEPARTMENT'S CONTENTIONS

6. In response to the Department's inquiry regarding the monthly H₂S testing, on February 16, 2011, the Permittee informed the Department that testing was not conducted in November 2010 and December 2010. The Permittee also stated in its response that the November 2010 and December 2010 H₂S concentrations (mol%) represented in the fourth quarter 2010 Periodic Monitoring Report were obtained from the last test performed in September 2010.

7. On March 8, 2011, the Department issued the Permittee a Notice of Violation (hereinafter, "NOV") for failure to perform monthly H₂S testing of each process gas stream that can be sent to the facility flare for combustion.

8. On March 29, 2011, the Permittee responded to the March 8, 2011 NOV. The facility stated that testing was not performed in November 2010 and December 2010 as a result of several extenuating circumstances.

9. Pursuant to Ala. Code §22-22A-5(18)c (2006 Rplc. Vol.), 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 be less than \$100.00 or 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 monthly H₂S testing to be a serious violation because this form of testing is necessary and required to demonstrate compliance with the sulfur dioxide limit of the Permit. 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 not conducting the required monthly H₂S testing for the months of November 2010 and December 2010.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department believes that the Permittee derived an insignificant economic benefit from not performing the monthly testing during November 2010 and December 2010.

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: Permittee has no previous violation history with the Department's Air Division 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 it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

10. 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, 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).

11. 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

12. 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 the Permittee of liability.

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 (2006 Reply. Vol.), as well as the need for timely and effective enforcement and the Department believes 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 \$8,000 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 Permit 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.

CROSBYS CREEK OIL & GAS, LLC

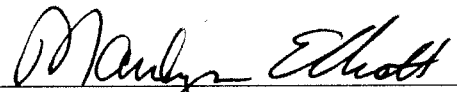
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

EMIL H. PAWLIK
(Printed Name)

MANAGER
(Printed Title)

May 17, 2011
Date Signed


Lance R. LeFleur
Director

7/11/2011
Date Executed

Attachment A

Penalty Calculation Worksheet

Crosbys Creek Oil & Gas, LLC
Silas, Choctaw County, Alabama
Facility No. 101-0019

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failure to conduct monthly H ₂ S testing	2	\$ 7,000.00	\$ 3,000.00	\$ -
<i>TOTAL</i>	2	\$ 7,000.00	\$ 3,000.00	\$ -

Economic Benefit	\$	-
Mitigating Factors	\$	-
Ability to Pay	\$	-
Other Factors	\$	(2,000.00)
CIVIL PENALTY	\$	8,000.00

Footnotes

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