



STATE OF MISSISSIPPI
PHIL BRYANT
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
GARY C. RIKARD, EXECUTIVE DIRECTOR

November 8, 2018

CERTIFIED MAIL #7012 2920 0000 4177 0545

Mr. Jake Neihaus, EHS
Ergon Inc.
2829 Lakeland Drive, Suite 2000
Flowood, Mississippi 39232

**Re: Agreed Order No. 6902 18
Ergon Refining Inc.
Ergon Biofuels, Inc.
Ergon Trucking, Inc**

Dear Mr. Neihaus:

Enclosed you will find a copy of Agreed Order No. 6902 18, which has been executed by the Executive Director of the Mississippi Department of Environmental Quality, Gary Rikard, on behalf of the Mississippi Commission on Environmental Quality.

The enclosed Order assesses a civil penalty. The penalty payment, when due, should be made by check payable to the Mississippi Department of Environmental Quality and returned in the enclosed, self-addressed envelope to the MDEQ Accounts Receivable at P.O. Box 2339, Jackson, MS 39225.

If you have any questions regarding your obligations under the enclosed order, please contact Felisa Keyes at (601) 961-5319.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Aultman", with the word "For" written in blue ink below it.

Tim Aultman, P.E.
Chief, Environmental Compliance and Enforcement Division

Enclosure
cc: Felisa Keyes

Agency Interest No. 8212 ENF20180001
Agency Interest No. 9039 ENF20180001
Agency Interest No. 8556 ENF20180001

BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

COMPLAINANT

VS.

ORDER NO. 6902 18

ERGON REFINING, INC.

AND

ERGON BIOFUELS, INC.

AND

ERGON TRUCKING, INC.

RESPONDENTS

AGREED ORDER

COME NOW the Mississippi Commission on Environmental Quality (Commission), acting through the staff and Executive Director of the Mississippi Department of Environmental Quality (MDEQ), Complainant, and Ergon Refining, Inc., Ergon Biofuels, Inc., and Ergon Trucking, Inc., Respondents, in the above captioned cause and agree as follows:

1.

By letters dated February 21, 2017, June 15, 2017, and February 23, 2018, Respondent was contacted by Complainant and notified of the following violations at Ergon Refining, Inc. located at 2125 Haining Road, Vicksburg, Mississippi 39183:

- A. Air - Title V Operating Permit No. 2780-00003: Permit Condition 3.B.3: *For Emission Points, AT-243, AT-244, AT-252, and AT-265, the permittee is subject to the New Source Performance Standard for Volatile Organic Liquid Storage Vessels (Including*

Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984 and the applicable General Provision (40 CFR 60, Subparts Kb and A) (Ref.: 40 CFR 60.110b, Subpart Kb).

1. The facility failed to notify MDEQ prior to filling or refilling internal floating roof tanks subject to Subpart Kb inspections as required in 40 CFR 60.113b(a)(5).
2. The facility failed to notify MDEQ prior to the seal gap measurements of an external floating roof tank subject to Subpart Kb as required in 40 CFR 113b(b)(5).
3. The facility failed to conduct inspections on Tanks 243 and 252 as required in 40 CFR 113b(a)(4).
4. The facility failed to conduct primary seal gap inspections every five years on the EFR tank subject to Subpart Kb as required in 40 CFR 113b(b)(1)(i).
5. The facility allowed the internal floating roof of Tank 265 to rest on leg supports during times other than when the tank was in the process of filling, emptying, or refilling as required in 40 CFR 60.112b(a)(1)(i).

B. Air - Title V Operating Permit No. 2780-00003: Permit Condition 3.B.5: *For Emission Points AT-201, AT-202, AT-203, AT-205, AT-206, AT-209, and AT-212, the permittee is subject to and shall comply with Standards of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification commenced after May 18, 1978, and Prior to July 23, 1984, and the applicable General Provisions (40 CFR 60, Subparts Ka and A) (Ref.: 40 CFR 60.110a, Subpart Ka).*

1. The facility failed to notify MDEQ 30 days prior to the seal gap measurement of EFR tanks subject to Subpart Ka as required in 40 CFR 113a(a)(iv).
2. The facility failed to conduct primary seal gap inspections every five years on EFR tanks subject to Ka as required in 40 CFR 113a(a)(1)(i)(A).

C. Air - Title V Operating Permit No. 2780-00003: Permit Condition 5.C.1: *The permittee shall submit the logs of daily observation, Method 9 performed and the results required by Condition 5.B.1 in accordance with Condition 5.A.4 (Ref.: 11 Miss. Admin. Code Pt. 2, R. 6.3.A(3)(c)).* The facility asserts the daily observations were being conducted, but the records of the inspections had been misplaced.

D. Air - Title V Operating Permit No. 2780-00003: Permit Condition 5.C.7: *For Emission*

Points AA-019, and AA-022, the permittee shall submit a report of any stack test results within sixty (60) days of conducting the respective stack test (Ref.: 11 Miss. Admin. Code Pt. 2, R.6.3.A(3)(c)). The results for the performance test on Emission Point AA-019 conducted on May 9, 2017, were submitted on July 31, 2017, which was 23 days late.

- E. Air - Title V Operating Permit No. 2780-00003: Permit Condition 5.C.18: *For Emission Point AA-018R, within fifteen (15) days of beginning actual construction, the permittee must notify DEQ in writing that construction has begun (Ref.: 11 Miss. Admin. Code Pt 2, R. 2.5C(2)).* The fifteen (15) day notification of beginning actual construction of Emission Point AA-018R was not submitted.
- F. Air - Title V Operating Permit No. 2780-00003: Permit Condition 5.C.17: *For Emission Point AA-018R, the permittee shall submit a certification of construction: Due within thirty (30) days of completion of construction or installation of an approved stationary source or prior to startup, whichever is earlier...(Ref.: 11 Miss. Admin. Code Pt.2, R. 2.5.D).* Construction was completed on Emission Point AA-018R on March 4, 2016, and a Certification of Construction was submitted on October 31, 2017, which was 606 days late.
- G. Air - Title V Operating Permit No. 2780-00003: Permit Condition 5.C.15: *For Emission Point AA-018R, the permittee shall notify the MDEQ of the specific monitoring provisions of 40 CFR 60.107a with which the permittee intends to comply. Notifications required by this paragraph shall be submitted with the notification of initial startup required by 40 CFR 60.7(a)(3) (Ref.: 40 CFR 60.108a(b), Subpart Ja).* The notification was dated December 15, 2017, which was 651 days late.
- H. Air - Title V Operating Permit No. 2780-00003: Permit Condition 5.B.39: *For Emission Point AA-018R, the permittee shall conduct a performance test to demonstrate initial compliance with each applicable emissions limit in 40 CFR 60.102a according to the requirements of 40 CFR 60.8 (Subpart A, General Provisions). The notification requirements of 40 CFR 60.8(d) apply to the initial performance test, but does not apply to performance tests conducted for the purpose of obtaining supplemental data because of continuous monitoring system breakdowns, repairs, calibration checks and zero and span adjustments (Ref.: 40 CFR 60.104a(a), Subpart Ja).* The initial performance test was required to be conducted and submitted by November 2, 2016. The first attempted test was

conducted on May 6, 2016 and submitted on October 19, 2017. The second attempted test was conducted on April 11, 2017, and submitted on July 31, 2017. However, these performance tests did not qualify because they were not performed correctly or under the appropriate process heater operating conditions. An acceptable performance test demonstrating compliance was conducted on December 18-19, 2017, and submitted on February 21, 2018.

- I. Air - Code of Federal Regulation 40 CFR 60.7(a)(3): *(a) Any owner or operator subject to the provisions of this subpart shall furnish the Administrator written notification or, if acceptable to both the Administrator and the owner or operator of a source, electronic notification, as follows: (3) A notification of the actual date of initial startup of an affected facility postmarked within 15 days after such date.* Respondent indicated that the Certification of Construction for Emission Point AA-018R, received on October 31, 2017, served as the notification of startup of a NSPS affected source. Therefore, the notification was received 606 days late.
- J. Air - Code of Federal Regulation 40 CFR 60.107a(c)(3) through (5) and 40 CFR 60.107a(d)(8): *The owner or operator of a process heater that has a rated heating capacity of less than 100 MMBtu and is equipped with combustion modification based technology to reduce NOx emissions (i.e., low-NOx burners or ultra-low NOx burners) may elect to comply with the monitoring requirements in paragraphs (d)(1) through (7) of this section or, alternatively, the owner or operator of such a process heater shall conduct biennial performance tests according to the requirements in 40 CFR 60.104a(i), establish a maximum excess O₂ operating limit or operating curve according to the requirements in 40 CFR 60.104a(i)(6) and comply with the O₂ monitoring requirements in paragraphs (c)(3) through (5) of this section to demonstrate compliance.* Respondent failed to install an O₂ analyzer capable of complying with the monitoring requirements of 40 CFR 60.107a(c) through (5). Since notification by Complainant, an O₂ analyzer capable of complying with the monitoring requirements has been installed and is currently being tested to establish a maximum excess O₂ operating limit.
- K. Air - Code of Federal Regulation 40 CFR 60.107a(a)(2): *The owner or operator of a fuel gas combustion device that elects to comply with the H₂S concentration limits in 40 CFR*

60.102a(g)(1)(ii) or a flare that is subject to the H₂S concentration requirement in 40 CFR 60.103a(h) shall install, operate, calibrate and maintain an instrument for continuously monitoring and recording the concentration by volume (dry basis) of H₂S in the fuel gases before being burned in any fuel gas combustion device or flare. AI-756 is the H₂S Continuous Emissions Monitoring System (CEMS) for continuously monitoring H₂S content in the fuel gas burned in the flare. Notable CEMS monitor downtime was recorded during 2017.

- L. Air - Code of Federal Regulation 40 CFR 60.103a(h): *Each owner or operator shall not burn in any affected flare any fuel gas that contains H₂S in excess of 162 ppmv determined hourly on a 3-hour rolling average basis. The combustion in a flare of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunctions is exempt from this limit.* AI-756 is the H₂S CEMS for continuously monitoring H₂S content in the fuel gas burned in the flare. Excess emissions were recorded by the CEMS for the flare during 2017.
- M. Air - Code of Federal Regulation 40 CFR 60.107a(e)(1): *Total reduced sulfur monitoring requirements. The owner or operator shall install, operate, calibrate and maintain an instrument or instruments for continuously monitoring and recording the concentration of total reduced sulfur in gas discharged to the flare.* AI-757 is the Total Reduced Sulfur (TRS) CEMS for continuously monitoring the TRS content in the gases routed to the flare. Excessive CEMS monitor downtime was recorded during the second half of 2017.
- N. Water - Hydrostatic Testing General Permit Coverage No. MSG130461: Respondent failed to obtain coverage under Mississippi's Hydrostatic Testing General NPDES Permit for hydrostatic testing discharges prior to 2015. Coverage No. MSG130461 was issued to Ergon Refining, Inc., New Storage Tank on September 4, 2015.
- O. Water - Hydrostatic Testing General Permit Coverage No. MSG130496: Respondent discharged hydrostatic testing wastewater at least once during a break in coverage after obtaining coverage under the Hydrostatic Testing General NPDES Permit. Coverage No. MSG130461 was terminated on January 4, 2016. Coverage No. MSG130496 was issued on October 27, 2016.
- P. Water - Hydrostatic Testing General Permit Coverage No. MSG130496: Respondent

submitted a late notification of surface discharge for hydrostatic testing of Tank 218 which took place on December 20-21, 2016.

In addition to the corrective actions above, Respondent agreed to install CO analyzers on eight (8) heaters: HG2 Heater (AA-022), HG3 Heater (AH-018), HP2 Heater (AH-017B), PDA Heater (AH-016), Reactor Charge Heater (AA-014), Reactor Charge Heater (AA-208), Vacuum Tower Heater (AA-019), and HPU Heater (AA-017A). Respondent also agreed to install a new analyzer panel pad, panel and shelter.

2.

By letters dated June 3, 2016, June 30, 2016, August 25, 2016, and April 3, 2017, Respondent was contacted by Complainant and notified of the following violations at Ergon Biofuels, Inc. located at 1833 Haining Road, Vicksburg, Mississippi 39183:

- A. Air - Title V Operating Permit No. 2780-00107: Permit Condition 3.B.27: *As an exemption to condition 3.B.26, the permittee may elect to operate the emission sources from emission point AH-003, (the natural gas fired DDGS dryer and the DDGS fluidized bed cooler) for 150 hours/year with uncontrolled emissions (Ref.: 11 Miss Admin. Code Pt. 2, R. 2.2.B(10)).* The Annual Certification of Compliance for Emission Point AH-003 for calendar year 2016 reported 166.38 hours of operation with uncontrolled emissions.
- B. Air - Title V Operating Permit No. 2780-00107: Permit Condition 3.B.3: *For Emission Point AD-001, the permittee shall limit Acetaldehyde emissions to 0.10 lbs/hr (3-hr average) and VOC emissions to 1.0 lb/hr (3-hr average). (Ref.: 11 Miss. Admin. Code Pt. 2, R. 2.2.B(10)).* On March 8, 2016, Emission Point AD-001 failed a performance test to demonstrate compliance with the 0.10 lbs/hr (3-hr average) emission limitation. Respondent determined the excessive emissions were due to a faulty chemical injection pump. The pump was replaced and the unit was retested on July 26, 2016 demonstrating compliance.
- C. Air - Title V Operating Permit No. 2780-00107: Permit Condition 3.B.5: *For Emission Point AH-003, the permittee shall limit emissions of the following pollutants, based on*

a 3-hr average emission rate: VOC at 4.7 lb/hr, PM/PM₁₀ at 4.1 lb/hr (filterable + condensable), CO at 7.2 lb/hr, and NO_x at 5.9 lb/hr. (Ref.: 11 Miss. Admin. Code Pt. 2, R. 2.2.B(10)). On March 8, 2016, Emission Point AH-003 failed a performance test to demonstrate compliance with the 7.2 lb/hr CO limit and the 4.1 lb/hr PM/PM₁₀ limit due to a crack in the exhaust stack. Repairs were made and a retest was conducted. The retest also indicated non-compliance. Respondent has submitted a Title V Modification Application to address this issue.

D. Water - NPDES Permit No. MS0060895:

1. Violations of BOD₅ milligram per liter (mg/L) monthly average limitation of 30 mg/L for the following: January 2016 and April 2016.
2. Violations of BOD₅ milligram per liter (mg/L) daily maximum limitation of 45 mg/L for the following: January 2016, March 2016 and April 2016.
3. Violations of BOD₅ pounds per day (lbs/day) monthly average limitation of 19 lbs/day for the following: April 2016.
4. Violations of BOD₅ pounds per day (lbs/day) daily maximum limitation of 28.5 lbs/day for the following: January 2016 and April 2016.
5. Violations of Dissolved Oxygen (DO) milligram per liter (mg/L) minimum of 6.0 mg/L for the following: March 2016, April 2016, May 2016 and June 2016.
6. Violations of Total Suspended Solids (TSS) milligram per liter (mg/L) monthly average limitation of 30 mg/L for the following: March 2016, April 2016 and June 2016.
7. Violations of Total Suspended Solids (TSS) milligram per liter (mg/L) daily maximum limitation of 45 mg/L for the following: March 2016, April 2016 and June 2016.

Based on the review of recent Discharge Monitoring Reports, the facility has returned to compliance.

By letter dated June 7, 2017, Respondent was contacted by Complainant and notified of the following violation at its facility located at Ergon Trucking, Inc. located at 697 Haining Road, Vicksburg, Mississippi 39183:

- A. Water - Pretreatment Permit No. MSP092180: Permit Condition S-6: Expiration of Permit. *At least 180 days prior to the expiration date of this permit pursuant to the State law and regulation, the permittee who wishes to continue to operate under this permit shall submit an application to the Permit Board for reissuance. [11 Miss. Admin. Code Pt. 6, R.1.1.5.B(1).]* Based on the Pretreatment Permit expiration date of August 31, 2017, the renewal application was due on or before March 4, 2017. The renewal application was received on March 6, 2017. Because the application was late, the permit and the facility's authority to discharge expired on August 31, 2017. Consequently, operation of the facility between the expiration date of the permit, August 31, 2017, and the date which the Mississippi Environmental Quality Permit Board or its designee acts on the renewal application, the facility is discharging without a permit. The renewal application is currently under review.

4.

In lieu of a formal enforcement hearing concerning the violations listed above, Complainant and Respondent agree to settle this matter as follows:

- A. Respondents agrees to pay and Complainant agrees to accept a civil penalty in the amount of \$405,000.00. Respondents shall pay this penalty to MDEQ within forty-five (45) days after this Agreed Order has been executed by the MDEQ Executive Director or his designee. The settlement payment shall be submitted to:
- Mississippi Department of Environmental Quality
Attn: Accounts Receivable
P.O. Box 2339
Jackson, MS 39225
- B. Until the Mississippi Department of Environmental Quality Permit Board or its designee acts on the renewal application for the Respondent's Pretreatment Permit renewal application for Ergon Trucking, Inc. MSP092180, Respondent shall comply

with Pretreatment Permit No. MSP092180 issued to Ergon Trucking, Inc. on March 5, 2014.

5.

Nothing in this Agreed Order shall limit the rights of MDEQ or the Commission in the event Respondents fails to comply with this Agreed Order. The Agreed Order shall be strictly construed to apply to those matters expressly resolved herein.

6.

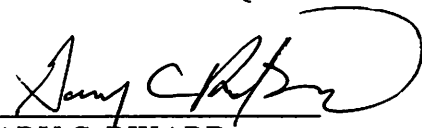
Nothing contained in this Agreed Order shall limit the rights of MDEQ or the Commission to take enforcement or other actions against Respondents for violations not addressed herein and for future violations of environmental laws, rules, and regulations.

7.

Respondents understands and acknowledges that it is entitled to an evidentiary hearing before the Commission pursuant to Miss. Code Ann. § 49-17-31 and that it has made an informed waiver of that right.

ORDERED, this the 5th day of NOVEMBER, 2018.

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

BY: 
GARY C. RIKARD
EXECUTIVE DIRECTOR
MISSISSIPPI DEPARTMENT
OF ENVIRONMENTAL QUALITY

AGREED, this the 29 day of October, 2018.

ERGON REFINING, INC.

BY: [Signature]

TITLE: VP-REFINING, ERI

STATE OF Mississippi

COUNTY OF Warren

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named Jeremy Kyser who first being duly sworn, did state upon his/her oath and acknowledge to me that he/she is the Vice President - Refining ERI of Ergon Refining, Inc. and is authorized to sign and enter this Agreement.

SWORN AND SUBSCRIBED BEFORE ME, this the 29 day of October, 2018.

[Signature]
NOTARY PUBLIC

My Commission expires: March 23, 2020



AGREED, this the 31st day of October, 2018.

ERGON BIOFUELS, INC.

BY: C Busbea

TITLE: V.P and General Manager

STATE OF Mississippi

COUNTY OF Rankin

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named Craig Busbea who first being duly sworn, did state upon his/her oath and acknowledge to me that he/she is the VP & General Manager of Ergon BioFuels, Inc. and is authorized to sign and enter this Agreement.

SWORN AND SUBSCRIBED BEFORE ME, this the 31st day of October, 2018.

Cindy W. Laia
NOTARY PUBLIC

My Commission expires: 2-8-2022

AGREED, this the 30 day of OCTOBER, 2018.

ERGON TRUCKING, INC.

BY: [Signature]

TITLE: PRESIDENT

STATE OF Mississippi

COUNTY OF RANKIN

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named Russ Maroney who first being duly sworn, did state upon his/her oath and acknowledge to me that he/she is the president of Ergon Trucking, Inc. and is authorized to sign and enter this Agreement.

SWORN AND SUBSCRIBED BEFORE ME, this the 30th day of October, 2018.

[Signature]
NOTARY PUBLIC

My Commission expires: ~~2/8/2022~~
2-8-2022

