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Office of Administrative Hearings

**COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
DIVISION OF ENFORCEMENT  
CASE NO. DOW-19-3-0147**

IN RE: Jim Beam Brands Co.  
222 Merchandise Mart Plaza, 16<sup>th</sup> Floor  
Chicago, Illinois 60654  
  
AI No. 40205  
Activity ID No. ERF20190001

DEC 13 2019

**AGREED ORDER**

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WHEREAS, the parties to this Agreed Order, the Energy and Environment Cabinet (hereinafter "Cabinet") and Jim Beam Brands Co. (hereinafter "Responsible Party"), state:

**STATEMENTS OF FACT**

1. The Cabinet is charged with the statutory duty of enforcing KRS Chapter 224 and the regulations promulgated pursuant thereto.
2. The Responsible Party is in the business of manufacturing and distributing distilled alcoholic spirits. The Responsible Party owns warehouses between 3200 and 4900 McCracken Pike in Frankfort, Woodford County, Kentucky for the purpose of storing distilled alcoholic spirits (hereinafter "Site" or "Facility"). The Responsible Party is registered with the Secretary of State as a Foreign Corporation and is in good standing.
3. On July 3, 2019, the Responsible Party contacted the Department for Environmental Protection Emergency Response Team's (hereinafter "ERT") hotline to report a warehouse fire and bourbon spill resulting from a lightning strike. The warehouse containing approximately 40,000 barrels of bourbon collapsed, destroying the barrels inside. Unknown

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amounts of the bourbon were released to the ground, burned in the fire, and released into Glenn's Creek and eventually the Kentucky River. The Kentucky Department of Fish and Wildlife Resources investigated a fish kill along approximately sixty-two (62) river miles of Glenn's Creek and the Kentucky River. ERT dispatched responders and the Division of Water (hereinafter "DOW") Frankfort Regional Office (hereinafter "FRO") dispatched an inspector. ERT and the Responsible Party monitored for dissolved oxygen, pH, and temperature and sampled for ethanol and chemical oxygen demand. Significant impact to Glenn's Creek and the Kentucky River was documented.

4. As a result of the incident described in paragraph 3, authorized representatives of the Cabinet issued the Responsible Party a Notice of Violation on or about July 23, 2019, alleging the following violations:

- a. 401 KAR 5:055 Section 2 – The Responsible Party was discharging from a point source into the waters of the Commonwealth, but does not hold an active KPDES Permit.
- b. KRS 224.70-110 – The Responsible Party caused pollutants to enter and contribute to the pollution of the waters of the Commonwealth.
- c. 401 KAR 10:031 Section 2 – The Responsible Party, aesthetically or otherwise, degraded the waters of the Commonwealth.
- d. KRS 224.1-400(15) – A large fire at the Facility caused degradation to the waters of the Commonwealth and required Cabinet response and costs expended.
- e. KRS 224.1-400(18) – A large fire at the Facility caused degradation to the waters of the Commonwealth and the Responsible Party has not

characterized the extent of the release as necessary to determine the effect of the release on the environment and has not taken actions necessary to correct the effect of the release on the environment.

5. Representatives of the Responsible Party participated in an initial administrative conference with the Cabinet's Division of Enforcement (hereinafter "DENF") in Frankfort, Kentucky on September 3, 2019. The Responsible Party neither admitted to nor denied the violations alleged herein, but has agreed to the entry of this Agreed Order to resolve the violations.

6. The Cabinet acknowledges that a Site Characterization and Monitoring Plan (hereinafter "SCMP") was submitted on October 10, 2019. The Cabinet issued a response on October 15, 2019 and met with the Responsible Party to discuss the response on December 3, 2019.

**NOW THEREFORE**, in the interest of settling all civil claims and controversies involving the alleged violations above, the parties hereby consent to the entry of this Agreed Order and agree as follows:

**REMEDIAL MEASURES**

7. Within thirty (30) days of the execution of this Agreed Order, the Responsible Party shall submit documentation showing proper disposal of all liquid and solid waste from the incident.

~~8. Within thirty (30) days of execution of this Agreed Order, the Responsible Party shall submit an Exit Report documenting the proper disposal of all liquid and solid waste from the incident.~~

9. Within thirty (30) days of Cabinet approval of the SCMP, the Responsible Party shall begin implementation of the SCMP. The Responsible Party shall implement the approved SCMP pursuant to the schedule contained therein.

10. Within ninety (90) days of completion of the approved SCMP, the Responsible Party shall submit a Site Characterization Report (hereinafter "SCR"). The SCR shall comply with the requirements of 401 KAR 100:030 Section 7. It shall also include maps which shall be drawn to scale and which shall identify all sampling locations for soil, sediment, groundwater, and surface water, as well as the analytical results for each sample taken at each sampling location. In addition, all laboratory analytical data shall be appended to the SCR.

11. The Cabinet shall review the SCR and determine if the Site has been characterized to the extent necessary to determine the effect of the release on the environment or if additional data is necessary. If additional work is necessary and the Cabinet determines that the Responsible Party is responsible for the work pursuant to KRS 224.1-400, the Cabinet shall notify the Responsible Party in writing of its final determination, which shall be subject to the provisions of KRS 224.10-420(2).

12. Within thirty (30) days of receipt of the Cabinet's determination that additional work is necessary, an amended SCMP, shall be submitted to the Cabinet for review. The approved amended SCMP shall be implemented according to the schedule contained in the approved amended SCMP.

13. Within thirty (30) days of completion of the amended SCMP, the Responsible Party shall submit an amended SCR to the Cabinet for approval.

14. Within sixty (60) days of Cabinet approval of the final SCR, the Responsible Party shall submit to the Cabinet a Corrective Action Plan (hereinafter "CAP") for restoration or remediation of the Site in accordance with KRS 224.1-400, KRS 224.1-405, and 401 KAR 100:030 if additional work is necessary and the Cabinet determines that the Responsible Party is responsible for the work pursuant to KRS 224.1-400. Any required CAP shall ensure that the Responsible

Party takes all actions necessary to correct the effect of the release on the environment in accordance with KRS 224.1-400, KRS 224.1-405, and 401 KAR 100:030.

15. If any required CAP cannot demonstrate restoration of the environment by removal of ethanol, then the remedy shall consider all factors listed in KRS 224.1-400(21) and shall demonstrate how it will be protective of human health, safety, and the environment. If any required CAP includes the utilization of land use restrictions, i.e. institutional controls, the Responsible Party shall include an Environmental Covenant with their Corrective Action Plan that shall comply with the requirements of KRS 224.80-100 et seq. The Environmental Covenant shall restrict the use of the property in a manner consistent with the proposed Corrective Action Plan.

16. The Responsible Party shall obtain the consent of any and all property owners, whose property is subject to any remedy that the Responsible Party selects under KRS 224.1-400(18)(b) "management in place", prior to proposing that remedy to the Cabinet in any required CAP. The Responsible Party shall provide to the Cabinet proposed legal documentation to be entered into with or by the property owner, including, but not limited to, environmental covenants and/or easements which shall run with the land, in order for the Responsible Party to implement any proposed institutional or engineering controls in accordance with KRS 224.1-400, KRS 224.1-405 and 401 KAR 100:030.

17. Within sixty (60) days of completion of restoration or remediation pursuant to any required and approved CAP, the Responsible Party shall submit to the Cabinet a Corrective Action Report (hereinafter "CAR") which shall describe how the Responsible Party has corrected the effect of the release, or threatened release of ethanol, on the environment in accordance with KRS 224.1-400, KRS 224.1-405, and 401 KAR 100:030. The CAR shall include the requirements of 401 KAR 100:030 Section 9(2).

18. The Cabinet shall review all of the submittals required per this Agreed Order and respond to the Responsible Party with a written Notice of Deficiency (hereinafter "NOD") if needed. The Responsible Party shall correct all deficiencies in accordance with the NOD, and any future NODs. The Responsible Party shall be allowed two opportunities to correct the same deficiencies. However, if the Cabinet issues a third NOD, the Cabinet may deem the Responsible Party in violation of this Agreed Order and seek enforcement of this Agreed Order in Franklin Circuit Court.

19. The Responsible Party may request a time extension to any completion date required in this Agreed Order or in any submittal required by this Agreed Order and approved by the Cabinet. The Cabinet may grant such request for time extension if it determines good cause has been shown. If the Cabinet denies the request, the Cabinet shall promptly notify the Responsible Party. Failing to request an extension prior to the completion date may subject the Responsible Party to the enforcement of this Agreed Order in Franklin Circuit Court.

20. The Responsible Party shall comply with the requirements of paragraphs 9 through 19 of this Agreed Order until the Cabinet makes a determination that the release on the environment has been corrected in accordance with KRS 224.10-400, KRS 224.1-405 and 401 KAR 100:030 and receives a "No Further Action" letter or its equivalent from the Cabinet. This may require the submission of additional or amended site characterization plans, site characterization reports, corrective action plans, and corrective action reports, at the written request of the Cabinet.

**OTHER REMEDIAL MEASURES**

21. If any site characterization is required on property that the Responsible Party does not own or lease, and if any ethanol is detected, then the Responsible Party shall notify the Cabinet

within forty-eight (48) hours. The Responsible Party shall notify the owner and any tenant or lessee, including any agency or subdivision of government, in writing, if requested by the Cabinet.

22. If any well or spring is hydrologically connected to the site, is relied upon as a source of drinking water for humans or livestock, is required to be sampled or tested as part of the SCR, and is found to contain any ethanol at or above the National Primary Drinking Water Standards found in 40 CFR Part 141 or the drinking water standards found in 401 KAR Chapter 8, whichever is more stringent, the Responsible Party shall provide, within forty-eight (48) hours, an alternate source of drinking water which meets all state and federal drinking water statutes and regulations. Provision of this alternate source of water shall continue unless the Responsible Party demonstrates that the contamination did not result from their activities, or subsequent testing reveals that contamination above the applicable level is no longer present. However, in no event shall the Responsible Party delay or suspend providing the alternate source of drinking water unless the Cabinet approves such delay in writing or a court of competent jurisdiction so orders.

23. Prior to the termination of this Agreed Order pursuant to paragraph 43, the Responsible Party shall provide written notice to the Cabinet thirty (30) days prior to any subsequent sale, assignment, or lease of the site, or any portion thereof, and provide the name, address, and telephone number of the new lessee, owner, or assignee of the property. The Responsible Party shall provide the Cabinet with a draft copy of each deed or land use contract prepared so the Cabinet has the opportunity to review and approve all use prior to the execution of the deed(s) or instruments.

24. The Responsible Party shall maintain any institutional controls and/or engineering controls that are put into operation under this Agreed Order pursuant to any required and approved CAP for as long as such exposure controls are necessary to ensure protection of human health and

the environment. The Responsible Party shall conduct inspections of all such implemented engineering controls for the site on a quarterly basis and certify annually in writing to the Cabinet, within thirty (30) days of the fourth quarter inspection, that the implemented engineering controls remain effective at protecting human health and the environment. The frequency of inspections at the site may be reduced upon written request by the Responsible Party, if the Responsible Party demonstrates that the revised schedule will continue to adequately protect human health and the environment.

25. The Responsible Party shall notify the Cabinet at least ten (10) days prior to the commencement of any sampling conducted pursuant to any CAP that may be required by this Agreed Order, including characterization, restoration or remediation, and verification sampling. The Cabinet shall be allowed to observe all such sampling and shall be provided split samples upon request. If such sampling is to commence on a certain date for an extended period of time, only one notification to the Cabinet will be required.

26. The Responsible Party shall keep all records, documents and information relating to the performance of the work conducted pursuant to this Agreed Order for three (3) years after restoration or remediation is determined by the Cabinet to be complete, or in accordance with applicable statutes and regulations in effect at the time the Responsible Party seeks to discard the documents, whichever is longer.

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#### CIVIL PENALTIES

27. The Cabinet has assessed a civil penalty in the amount of six hundred thousand dollars (\$600,000) for violations alleged in paragraph 4. The civil penalty shall be tendered by the Responsible Party to the Cabinet within thirty (30) days of execution of this Agreed Order.

28. Payment of the civil penalty shall be by cashier's check, certified check, or money

order, made payable to "Kentucky State Treasurer" and sent to the attention of the Director, Division of Enforcement, Department for Environmental Protection, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please note "DOW-19-3-0147" on the instrument of payment.

**RESPONSE COSTS**

29. The Responsible Party shall reimburse the Cabinet for its documented response costs expended in response to the incident at the Site. Within thirty (30) days of entry of this Agreed Order by the Secretary or his designee, the Responsible Party shall pay to the Cabinet a combined total of one hundred twelve thousand seventy-four dollars and eighty-five cents (\$112,074.85) for the Cabinet's past response costs through December 4, 2019. Payment shall be made in the form of a check, cashier's check, certified check, or money order made payable to the "Kentucky State Treasurer", attention Hazardous Waste Management Fund, DOW-19-3-0147. The payment shall be sent to Division of Waste Management, Program Planning and Administration Branch, Department for Environmental Protection, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601.

**FORCE MAJEURE**

30. The Responsible Party shall perform the requirements of this Agreed Order within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a force majeure, in which event the delay in performance shall be excused. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Responsible Party, or the Responsible Party's consultants and contractors, which could not be overcome by due diligence and which delays or prevents performance by a date required by this Agreed Order. Force majeure events do not include unanticipated or increased costs of performance, changed economic or financial conditions, normal

precipitation events, the failure by a contractor to perform, or the failure by a supplier to deliver unless such failure is itself caused by a force majeure event.

31. The Responsible Party shall notify the Director of the Division of Enforcement by telephone by the end of the next business day and in writing within seven (7) business days after it becomes aware of events which it knows or should know constitute a force majeure. The notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to minimize the delay and an estimated timetable for implementation of these measures. The Cabinet will respond in writing to any written notice received. Failure to comply with the notice provision of this section shall be grounds for the Cabinet to deny an extension of time for performance.

32. If the Responsible Party demonstrates to the Cabinet that the delay has been or will be caused by a force majeure event, the Cabinet will extend the time for performance for that element of the Agreed Order for a period at least equal to the delay resulting from such circumstances. This shall be accomplished through an Agreed Order amending this Agreed Order. The amended Agreed Order may alter the schedule for performance or completion of other tasks required by this Agreed Order.

33. If a dispute over the occurrence or impact of a force majeure event cannot be resolved, the Cabinet reserves its right to relief in Franklin Circuit Court to enforce the terms of the Agreed Order, and the Responsible Party reserves its right to seek a hearing under KRS 224.10-420(2).

#### **MISCELLANEOUS PROVISIONS**

34. This Agreed Order addresses only the alleged violations specifically described herein. Other than those matters resolved by entry of this Agreed Order, nothing contained herein

shall be construed to waive or to limit any remedy or cause of action by the Cabinet based on statutes or regulations under its jurisdiction and the Responsible Party reserves its defenses thereto. The Cabinet expressly reserves its right at any time to issue administrative orders and to take any other action it deems necessary that is not inconsistent with this Agreed Order, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and the Responsible Party reserves its defenses thereto.

35. This Agreed Order shall not prevent the Cabinet from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to the Responsible Party. The Responsible Party reserves its defenses thereto, except that the Responsible Party shall not use this Agreed Order as a defense.

36. The Responsible Party waives its right to any hearing on the matters contained herein. However, failure by the Responsible Party to comply strictly with any or all of the terms of this Agreed Order shall be grounds for the Cabinet to seek enforcement of this Agreed Order in Franklin Circuit Court and to pursue any other appropriate administrative or judicial action under KRS Chapter 224, and the regulations promulgated pursuant thereto.

37. The Agreed Order may not be amended except by a written order of the Cabinet's Secretary or his designee. The Responsible Party may request an amendment by writing the Director of the Division of Enforcement at 300 Sower Boulevard, Frankfort, Kentucky, 40601 and stating the reasons for the request. If granted, the amended Agreed Order shall not affect any provision of this Agreed Order unless expressly provided in the amended Agreed Order.

38. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that the Responsible Party's complete compliance with this Agreed Order will result in compliance with the provisions of KRS Chapter 224, and the regulations promulgated

pursuant thereto. Notwithstanding the Cabinet's review and approval of any plans formulated pursuant to this Agreed Order, the Responsible Party shall remain solely responsible for compliance with the terms of KRS Chapter 224, and the regulations promulgated pursuant thereto, this Agreed Order and any permit and compliance schedule requirements.

39. The Responsible Party shall give notice of this Agreed Order to any purchaser, lessee or successor in interest prior to the transfer of ownership and/or operation of any part of its facility occurring prior to termination of this Agreed Order, shall notify the Cabinet that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer. Whether or not a transfer takes place, the Responsible Party shall remain fully responsible for payment of all stipulated penalties and for performance of all remedial measures identified in this Agreed Order.

40. This Agreed Order applies specifically and exclusively to the unique facility referenced herein and is inapplicable to any other site.

41. This Agreed Order shall be of no force and effect unless and until it is entered by the Secretary or his designee as evidenced by his signature thereon. If this Agreed Order contains any date by which the Responsible Party is to take any action or cease any activity, and the Secretary enters the Agreed Order after that date, then the Responsible Party is nonetheless obligated to have taken the action or ceased the activity by the date contained in this Agreed Order.

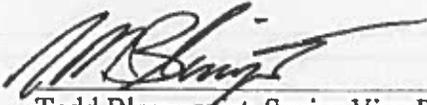
42. Compliance with this Agreed Order is not conditional on the receipt of any federal, state, or local funds.

#### TERMINATION

43. This Agreed Order shall terminate upon the Responsible Party's completion of all requirements described in this Agreed Order. The Responsible Party may submit written notice to

the Cabinet when it believes all requirements have been performed. The Cabinet will notify the Responsible Party in writing of whether it intends to agree with or object to termination. Completion of the requirements of this Agreed Order by the Responsible Party shall constitute a full and complete settlement of all alleged violations included in the Notice of Violation issued on or about July 23, 2019 as set forth in paragraph 4 of this Agreed Order. The Cabinet reserves its right to enforce this Agreed Order, and the Responsible Party reserves its right to file a petition for hearing pursuant to KRS 224.10-420(2) contesting the Cabinet's determination.

**AGREED TO BY:**



Todd Bloomquist, Senior Vice President, General Counsel & Secretary  
Jim Beam Brands Co.

12/6/19

Date

**APPROVAL RECOMMENDED BY:**

  
\_\_\_\_\_  
Michael B. Kroeger, Director  
Division of Enforcement

12/6/19  
Date

  
\_\_\_\_\_  
John G. Horne II, Executive Director, Office of Legal Services  
Energy and Environment Cabinet

12/6/19  
Date

**ORDER**

Wherefore, the foregoing Agreed Order is entered as the final Order of the Energy and Environment Cabinet this 9<sup>th</sup> day of December, 2019.

ENERGY AND ENVIRONMENT CABINET



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R. Bruce Scott, Deputy Secretary  
Energy and Environment Cabinet

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing **AGREED ORDER** was mailed, postage prepaid, to the following this 9<sup>th</sup> day of December, 2019.

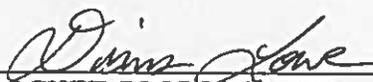
Jim Beam Brands Co.  
ATTN: Mr. Reginald Champagne  
222 Merchandise Mart Plaza, 16<sup>th</sup> Floor  
Chicago, Illinois 60654

Jennifer J. Cave  
Stites & Harbison PLLC  
400 West Market Street, Suite 1800  
Louisville, Kentucky 40202

And mailed, messenger to:

Michael B. Kroeger, Director  
Division of Enforcement  
300 Sower Boulevard  
Frankfort, Kentucky 40601

John G. Horne, II  
Office of Legal Services  
300 Sower Boulevard  
Frankfort, Kentucky 40601

  
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