

ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	Order No. 19-XXX-CSW
Choctaw County Regional Landfill)	
Fire Tower Road)	
Toxey, Choctaw County, Alabama)	
Solid Waste Disposal Permit No.12-01)	
)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and the Choctaw County Commission (hereinafter “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Solid Wastes and Recyclable Materials Management Act (hereinafter “SWRMMA”), Ala. Code §§ 22-27-1 to 22-27-18, as amended.

STIPULATIONS

1. The Permittee operates a municipal solid waste landfill, known as the Choctaw County Regional Landfill (hereinafter “landfill”) in Toxey, Choctaw County, Alabama, which is the subject of this Consent Order.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, and Ala. Code § 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, as amended.
4. On March 7, 2014, the Department issued renewal Solid Waste Disposal Permit Number 12-01 to the Permittee for the operation of the landfill located on Fire Tower Road, Toxey, Choctaw County, Alabama.

5. On April 11, 2018, Department personnel conducted a site visit of the Permittee's landfill to determine compliance with Division 13 of the ADEM Administrative Code. Department personnel documented the following violations:

a. ADEM Admin Code r. 335-13-4-.17(2) requires that the Permittee must design, construct and maintain a run-off system from the active and/or closed portions of the landfill. Department personnel documented that the sediment pond contained excessive amounts of sediment and had not been properly maintained.

b. ADEM Admin Code r. 335-13-4-.17(3) requires that the Permittee must design, construct and maintain on-site drainage structures to carry incident precipitation from the disposal site so as to minimize the generation of leachate, erosion and sedimentation. Run-off from the active and/or closed portions of the landfill unit must be handled and routed to a settling basin or other sedimentation control structure to remove sediment prior to release onto adjacent properties or waters. At the time of the inspection, large amounts of stormwater and leachate were documented in the active disposal area. Drainage structures were at capacity with sediment and were not directing stormwater to the sediment basins. Erosion rills had formed on the slopes of Cell 2A, further indicating that run-off was not being adequately controlled.

c. ADEM Admin. Code r. 335-13-4-.22(1)(d) requires that the landfill unit must be operated in accordance with approved plans and permits. Section I.F. of Solid Waste Permit 12-01 requires that the facility be operated to minimize the possibility of an unplanned sudden or nonsudden release of contaminants (including leachate) to air, soil, groundwater, or surface water. Numerous leachate seeps were documented along the southern portion of the landfill releasing leachate onto an unlined area of the landfill.

d. ADEM Admin Code r. 335-13-4-.21(1)(d) requires that the landfill unit shall be operated in such a manner that there will be no water pollution or unauthorized discharge. ADEM Admin Code r. 335-13-1-.03(36) defines a "discharge" as the accidental or intentional spilling, leaking, pumping, emitting, emptying, or dumping of solid waste, including leachate, into or on any land or water. Department personnel documented that the leachate clean-out pump was damaged and discharging

leachate onto the ground while the leachate sump pump was in operation. Also, the leachate seeps noted along the southern portion of the landfill had migrated through the drainage ditches to both of the sediment basins.

e. ADEM Admin Code r. 335-13-4-.22(1)(a)1. requires that a minimum of six inches of compacted earth or other Department approved alternative cover material shall be added at the conclusion of each day's operation. A significant amount of exposed waste was documented on the previous disposal face and along the slopes of Cell 2A.

f. ADEM Admin Code r. 335-13-4-.22(2)(b) requires that litter shall be controlled within the permitted facility. At the time of inspection, excessive litter was present over a majority of the permitted facility.

6. On April 21 and April 27, 2018, Department personnel received photos indicating that the issues documented during the April 11, 2018, site visit had been corrected.

7. On April 30, 2018, Department personnel conducted a site visit of the Permittee's landfill to determine compliance with Division 13 of the ADEM Administrative Code and to determine if the violations noted above had been resolved. Department personnel documented the following violations:

a. ADEM Admin Code r. 335-13-4-.17(2) requires that the Permittee must design, construct and maintain a run-off system from the active and/or closed portions of the landfill. Department personnel documented that the sediment pond contained excessive amounts of sediment and had not been properly maintained.

b. ADEM Admin Code r. 335-13-4-.17(3) requires that the Permittee must design, construct and maintain on-site drainage structures to carry incident precipitation from the disposal site so as to minimize the generation of leachate, erosion and sedimentation. Run-off from the active and/or closed portions of the landfill unit must be handled and routed to a settling basin or other sedimentation control structure to remove sediment prior to release onto adjacent properties or waters. At the time of the inspection, drainage structures were at capacity with sediment and not directing stormwater to the sediment basins. Erosion rills, which were present during the previous inspection, were still present along the slopes of Cell 2A, indicating that run-off is not being adequately controlled.

e. ADEM Admin. Code r. 335-13-4-.22(1)(d) requires that the landfill unit must be operated in accordance with approved plans and permits. Section I.F. of Solid Waste Permit 12-01 requires that the facility be operated to minimize the possibility of an unplanned sudden or nonsudden release of contaminants (including leachate) to air, soil, groundwater, or surface water. While contaminated soil from the leachate seeps documented on April 11, 2018, had been excavated, new leachate seeps had developed along the southern and western portions of the landfill.

d. ADEM Admin Code r. 335-13-4-.21(1)(d) requires that the landfill unit shall be operated in such a manner that there will be no water pollution or unauthorized discharge. Department personnel documented that the leachate clean-out pump was damaged and was actively discharging leachate on the ground, even when in the off position. The released leachate from the clean-out pipe was draining toward the sediment basin.

e. ADEM Admin Code r. 335-13-4-.22(1)(a)1. requires that a minimum of six inches of compacted earth or other Department approved alternative cover material shall be added at the conclusion of each day's operation. A significant amount of exposed waste was documented along the slopes of Cell 2A.

f. ADEM Admin Code r. 335-13-4-.22(1)(d) requires that the operation and use of the landfill unit shall be as stipulated in the permit. Section II.A. of Solid Waste Disposal Permit No. 12-10 requires that the Permittee shall operate and maintain the disposal facility consistent with the application, the permit, and ADEM Admin. Code, Division 13. At the time of the inspection, a pile of excavated sanitary waste was noted in an unlined portion of the facility. A clay cover or berms had not been constructed around the stockpiled material. Numerous leachate seeps were observed coming from the stockpiled material and draining towards the sediment basin. Clay dividers had not been constructed to prevent the leachate from contaminating site-generated stormwater.

g. ADEM Admin Code r. 335-13-4-.22(2)(b) requires that litter shall be controlled within the permitted facility. At the time of inspection, excessive litter was present over a majority of the permitted facility.

8. On June 27, 2018, Department personnel conducted a site visit of the Permittee's landfill to determine compliance with Division 13 of the ADEM Administrative Code and to determine if the violations noted above had been resolved. Department personnel documented the following violations:

a. ADEM Admin Code r. 335-13-4-.17(2) requires that the Permittee must design, construct and maintain a run-off system from the active and/or closed portions of the landfill. Department personnel documented that the sediment pond contained excessive amounts of sediment and had not been properly maintained.

b. ADEM Admin Code r. 335-13-4-.17(3) requires that the Permittee must design, construct and maintain on-site drainage structures to carry incident precipitation from the disposal site so as to minimize the generation of leachate, erosion and sedimentation. Run-off from the active and/or closed portions of the landfill unit must be handled and routed to a settling basin or other sedimentation control structure to remove sediment prior to release onto adjacent properties or waters. At the time of the inspection, drainage structures were at capacity with sediment and not directing stormwater to the sediment basins. Erosion rills, which were present during the previous inspections, were still present along the slopes of Cell 2A, indicating that run-off is not being adequately controlled.

c. ADEM Admin. Code r. 335-13-4-.22(1)(d) requires that the landfill unit must be operated in accordance with approved plans and permits. Section I.F. of Solid Waste Permit 12-01 requires that the facility be operated to minimize the possibility of an unplanned sudden or nonsudden release of contaminants (including leachate) to air, soil, groundwater, or surface water. Several leachate seeps were noted along the southwestern corner of Cell 2A.

d. ADEM Admin Code r. 335-13-4-.21(1)(d) requires that the landfill unit shall be operated in such a manner that there will be no water pollution or unauthorized discharge. Furthermore, ADEM Admin. Code r. 335-13-4-.22(2)(e) requires that environmental monitoring and treatment structures shall be maintained in good repair. Department personnel documented that the leachate clean-out pump was damaged and was actively discharging leachate on the ground, even when in the off position. The released leachate from the clean-out pipe was draining toward the sediment basin.

e. ADEM Admin Code r. 335-13-4-.22(1)(a)1. requires that a minimum of six inches of compacted earth or other Department approved alternative cover material shall be added at the conclusion of each day's operation. A significant amount of exposed waste was documented along the slopes of Cell 2A.

f. ADEM Admin Code r. 335-13-4-.22(1)(d) requires that the operation and use of the landfill unit shall be as stipulated in the permit. Furthermore, Section II.A. of Solid Waste Disposal Permit No. 12-10 requires that the Permittee shall operate and maintain the disposal facility consistent with the application, the permit, and ADEM Admin. Code, Division 13. The Department personnel noted and facility personnel confirmed that waste from Cell 2 had been excavated and stockpiled in an unlined portion of Cell 3. A clay cover or berms had not been constructed around the stockpiled material. Numerous leachate seeps were observed coming from the stockpiled material causing leachate to drain towards the sediment basin. Clay dividers had not been constructed to prevent the leachate from contaminating site-generated stormwater.

g. ADEM Admin Code r. 335-13-4-.22(2)(b) requires that litter shall be controlled within the permitted facility. At the time of inspection, excessive litter was present over a majority of the permitted facility.

9. On October 3, 2018, the Department conducted a show cause meeting with the Permittee, at which time the Permittee contended that improvements and corrections had been made in all areas related to the violations noted in this Order. The Permittee stated that the sanitary waste that had been observed stockpiled on an unlined portion of the facility was actually exposed historic sanitary waste that was periodically being excavated and moved to Cell 2A.

10. On November 29, 2018, Department personnel conducted a follow-up inspection at the Choctaw County Regional Landfill. During the inspection, litter and exposed waste were observed in various areas. The sediment control structures were not adequately maintained and a discolored liquid was observed in the active cell. In addition, the leachate tank for the active portion of the landfill was actively leaking.

11. On February 26, 2019, the Department conducted a routine compliance inspection at the Choctaw County Regional Landfill. During the inspection, 51 inches of leachate was noted on the landfill liner. ADEM Admin Code r. 335-13-4-.18(2) states that a leachate collection system shall be required that is designed and constructed to maintain less than 30 cm (12 inches) depth of leachate over the liner. In addition, maintenance activities were observed being performed on the sediment basin.

12. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of each 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 the Permittee; the economic benefit which delayed compliance may confer upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee 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 constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Permittee failed to comply with certain provisions of ADEM Admin. Code div. 335-13 and Solid Waste Disposal Permit No. 12-01 regarding landfill operations. The Department noted unauthorized discharges of fluids to groundwater, surface water and/or soils.

B. **THE STANDARD OF CARE:** The Permittee failed to employ an appropriate standard of care to ensure compliance with certain solid waste disposal requirements.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if the Permittee has realized an economic benefit as a result of the violations noted.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts employed by the Permittee to mitigate potential effects upon the environment that may have been created as a result of the violations listed.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee does not have a history of similar violations.

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 Consent Order is a negotiated settlement and, therefore, the Department has determined 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.

12. 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

13. 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.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Permittee, along with the Department, desires to resolve and settle the alleged violations 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) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; 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. That, not later than **forty-five (45) days** after issuance of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$29,625.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified check 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

All checks shall reference the Permittee's name and address and the ADEM Administrative Order number of this action.

B. That immediately, upon the issuance of this Order and continuing each and every day thereafter, the Permittee shall comply with all applicable provisions of ADEM Admin Code div. 335-13 and Solid Waste Disposal Permit Number 12-01.

C. That the Permittee shall submit a Corrective Action Plan to the Department no later than **sixty (60) days** following the issuance of this Consent Order. The Corrective Action Plan shall include:

1. A detailed maintenance schedule to be followed by the facility to maintain the integrity of the run-off control system and sediment pond;

2. An assessment of the leachate collection system to determine if the system is operating as designed and whether modifications to the system are needed in order to comply with all applicable requirements of ADEM Admin Code div. 335-13 and Solid Waste Disposal Permit Number 12-01. The Corrective Action Plan shall include proposed remedies for any deficiencies that are found as a result of the leachate collection system assessment;

3. A revised Operational Plan to address any systemic deficiencies which may have led to the violations alleged in this Order. Among other issues noted in this Order, or as may be later identified,

the revised Operation Plan shall include provisions for proper cover and maintenance of landfill slopes and proper litter control;

4. A timeline for completing an assessment of corrective measures to include a hydrogeological site investigation to fully delineate and characterize the migration pathways of the groundwater contamination; and

5. A schedule for implementation of recommended actions to address the deficiencies outlined in this Order or identified as part of the assessments required in this Order.

6. If the Department determines through its review of the submitted Corrective Action Plan that it is not sufficient to accomplish compliance with applicable Federal, State laws, or Departmental regulations, or with ADEM-issued permits, then the Permittee shall submit a revised Corrective Action Plan, addressing the Department's concerns, to the Department no later than **thirty (30) days** after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations made in the Corrective Action Plan pursuant to the schedule set forth in the approved plan.

D. That, not later than **thirty (30) days** after the issuance of this Order, the Permittee shall submit to the Department a plan for approval for the removal of any remaining historic sanitary waste located in Cell 3, along with any contaminated soil due to the unauthorized discharge of fluids. The Permittee shall adhere to methods outlined in the Alabama Environmental Investigation and Remediation Guidance to determine the extent of contaminated soils to be removed. The Permittee shall also submit a report prepared by a professional engineer licensed to practice in the State of Alabama certifying that the removal was completed in accordance with the approved plan.

E. That, not later than **ninety (90) days** after the issuance of this Order, the Permittee shall submit a revised Groundwater Monitoring Plan for approval to include at a minimum, the addition of assessment monitoring wells (AMW-1 through AMW-7) into the groundwater monitoring network and the installation of an additional background monitoring well in a location approved by the Department .

F. 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.

G. The parties agree that, subject to the terms of these provisions 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.

H. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. 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.

J. The parties 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 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; 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.

K. The parties 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 this Consent Order.

L. The parties agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

M. The parties agree that final approval and entry into this Consent 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.

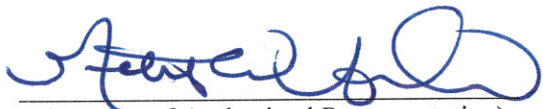
N. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

O. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

P. The parties agree that, except as otherwise set forth herein, this Consent 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.

CHOCTAW COUNTY COMMISSION



(Signature of Authorized Representative)

Michael W. Armistead

(Printed Name)

Probate Judge

(Printed Title)

05/14/19

(Date Signed)

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur
Director

(Date Signed)