

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

| | | |
|---------------------------------------|---|-----------------------------|
| IN THE MATTER OF: |) | |
| |) | Consent Order No. 24-XXX-SW |
| Cherokee Environmental Resources, LLC |) | |
| 2390 Mount Hebron Road |) | |
| Boaz, AL |) | |
| Registration Number BUD0000-056902 |) | |

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) and Cherokee Environmental Resources, LLC (hereinafter “Cherokee”, “Registrant”, or “Distributor”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, and the Solid Wastes and Recyclable Materials Management Act (hereinafter “SWRMMA”), Ala. Code §§ 22-27-1 to 22-27-18, as amended, and the ADEM Administrative Code promulgated hereunder,

STIPULATIONS

1. Cherokee is a domestic limited liability company registered in Alabama and the distributor of by-product material beneficially used for the purpose of land application. The Distributor’s principal place of business is located at 2390 Mount Hebron Road in Boaz, Alabama, and is currently operating in Alabama under Registration Number BUD0000-056902. According to the 2023 Annual Report submitted on February 27, 2024, the Distributor land applied by-product material at several locations in Alabama during 2023, including: Blount, Cleburne, Lee, and Russell Counties.

2. The Department is a duly constituted Department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, 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 April 13, 2020, the Department's regulations governing the beneficial use of by-product material (ADEM Admin. Code ch. 335-13-16) became effective and the Distributor became subject to these regulations. These regulations were subsequently amended and became effective on August 15, 2022.

5. On July 7, 2022, Cherokee registered as a Distributor in the ADEM Beneficial Use Program with an expiration date of March 31, 2023. On February 27, 2023 Cherokee submitted Beneficial Use application forms for approval. Pursuant to ADEM Admin. Code r. 335-13-16-.04(7) Applicants who submit a complete registration renewal application at least thirty (30) days prior to the expiration date of their existing registration, shall have their existing registration administratively extended, until such time as the Department makes a final determination on the registration renewal application.

DEPARTMENT'S CONTENTIONS

6. On July 28, 2023, the Department conducted an inspection of a land application site located on Fat Dunn Road/Mighty Oak Drive at Adcock Farm in Blount County, initiated by complaints, to determine compliance with Division 13 of the ADEM Administrative Code.

7. The Department performed a follow-up inspection on August 8, 2023 of land application on Fat Dunn Road/Mighty Oak Drive at Adcock Farm in Blount County to determine compliance with Division 13 of the ADEM Administrative Code.

8. Based on the July 28, 2023 and August 8, 2023 inspections, Cherokee was issued a Notice of Violation (NOV) on August 24, 2023, for these violations:

a. ADEM Admin. Code r. 335-13-16-.05(3) requires all transport and application site staging of Food Processing Residuals (FPR) material to be in closed container(s), and such containers shall be kept closed unless adding or removing material, until land applied. During both inspections, staging of the FPR material was noted to have occurred directly on the ground with no storage containers on site.

b. ADEM Admin. Code r. 335-13-16-.07(2)(a) and (b) requires subsurface injection of all FPR material unless the pH of the material is raised to twelve (12) or higher by alkali addition and, without the addition of more alkali, shall remain at twelve (12) or higher for thirty (30) minutes. During the initial inspection, no subsurface injection or incorporation of the FPR by-product material was observed, and no documentation of the required pH adjustment with alkali addition was available or provided. During the follow-up inspection, the same material was noted on the surface.

c. ADEM Admin. Code r. 335-13-16-.05(4)(b) requires by-product material storage, application site staging, and land application areas shall be located a minimum of five hundred (500) feet from public and private drinking water wells. During the August 8, 2023, inspection, land applied material was observed within the required buffer from a well.

9. On September 26, 2023, the Department conducted an inspection of a land application site at Adcock Farms located at Joy Road, initiated by a complaint, to determine compliance with Division 13 of the ADEM Administrative Code. During the inspection the following concerns were noted:

a. ADEM Admin. Code r. 335-13-16-.05(3) requires that all transport and application site staging of FPR material shall be in closed container(s). Containers shall be kept closed unless adding or removing material, until land applied in accordance with these

regulations. During the inspection FPR material was being stored on the ground. This action is also in violation of Consent Order 23-106-CSW.

b. ADEM Admin. Code r. 335-13-16-.07(2)(a) and (b) requires subsurface injection of all FPR material unless the pH of the material is raised to twelve (12) or higher by alkali addition and, without the addition of more alkali, shall remain at twelve (12) or higher for thirty (30) minutes. During the initial inspection, no subsurface injection or incorporation of the FPR by-product material was observed, and no documentation of the required pH adjustment with alkali addition was available or provided. During the inspection, FPR materials were insufficiently incorporated into the ground. This action is also in violation of Consent Order 23-106-CSW.

c. ADEM Admin. Code r. 335-13-16-.04(2)(d)(2)(v) requires an Operation Plan (OP) at a minimum to include best management practices to minimize spills. Cherokee's OP for FITCO, found in the November 29, 2022 application under 4(c), indicated that no by-product will be allowed to be tracked on the highways. During the inspection, FPR materials were being tracked from the land application site/staging area onto the paved road.

10. On February 29, 2024, the Department conducted inspections of a land application site and storage area at Adcock Farms located at Joy Road, initiated by numerous complaints, to determine compliance with Division 13 of the ADEM Administrative Code. During the inspections the following concerns were noted:

a. ADEM Admin. Code r. 335-13-16-.04(2)(d)(2)(v) requires an Operation Plan (OP) at a minimum to include best management practices to minimize spills. Cherokee's OP for Adcock Farms, found in the December 7, 2023, application under 4(c), indicated that no

by-product will be allowed to be tracked on the highways. During the inspections, Biosolid materials were being tracked from the land application site/staging area onto the Joy Road.

b. ADEM Admin. Code r. 335-13-16-.05(4)(d) requires by-product material storage, application site staging, and land application areas shall be located a minimum of one hundred (100) feet from surface waters of the state. During the inspection, biosolids were noted to be land applied within the required buffer area and also tracked into the unnamed tributary by application equipment, that actively flows into a nearby creek.

11. 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 the 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 Distributor; the economic benefit which delayed compliance may confer upon the Distributor; the nature, extent, and degree of the success of the Distributor's efforts to minimize or mitigate the effects of such violation upon the environment; the Distributor's history of previous violations; and the ability of the Distributor 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 Department considers the fact that the Distributor did not comply with provisions of ADEM Admin. Code div. 335-13 at multiple locations in Alabama to be serious. However, the Department has no evidence of any irreparable harm to human health or the environment.

B. THE STANDARD OF CARE: The Distributor failed to exhibit a sufficient standard of care by failing to operate in a manner commensurate with beneficial use regulatory requirements at the land application sites aforementioned in this order.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if the Distributor has realized a significant 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 Distributor to mitigate any effects upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Distributor has a history of similar violations regarding failure to abide by staging/storage and land application requirements for FPR material which were included in Consent Order 23-106-CSW issued September 20, 2023.

F. THE ABILITY TO PAY: The Distributor has alleged an inability to pay the civil penalty. ADEM has utilized EPA's ABEL model to evaluate the ability of Cherokee to afford the civil penalty. Based on the review, Cherokee appears to have the ability to pay the penalty.

G. OTHER FACTORS: The Department has carefully considered the six (6) statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and has concluded that a civil penalty provided in Section A of the Order is appropriate given the actions of the violator, and in keeping with a penalty range imposed by the Department for similar violations, as follows:

| <u>Violation Type</u> | <u>Penalty Range for Violation Type</u> |
|---|---|
| Beneficial Use Distributor Operation Requirements | \$100 - \$25,000 |

The Department neither admits nor denies the Registrant'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 interest of the citizens of Alabama.

DISTRIBUTOR'S CONTENTIONS

11. The Distributor indicated incorporation was occurring and ongoing at the time of inspection with lime being applied at the end of the day.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Distributor, 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), as amended, 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 Distributor agree to enter into this Consent Order with the following terms and conditions:

A. That, not later than forty-five days after issuance of this Order, the Distributor agrees to pay to the Department a civil penalty in the amount of \$56,400.00 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 Distributor's name and address and the ADEM Consent Order number of this action.

B. Cherokee shall immediately cease and desist from transport, storage, and land application of FPR, which is regulated by ADEM Admin. Code ch. 335-13-16. The cease and desist will remain in effect until the following actions are completed:

- 1) Cherokee receives written approval from the Department for the updated OP and NMP described in paragraph C below, and
- 2) Cherokee is notified in writing by the Department of the removal of the cease and desist.

C. That, within thirty days of issuance of this Order, Cherokee shall submit to the Department an updated OP and NMP that comply with all of the requirements of ADEM Admin. Code r. 335-13-16-.03(4)(c), and 335-13-16-.04(2)(c-d). The required updates shall include the specific activities to be employed to ensure proposed land application of FPR material complies with 335-13-16-.07(8)(2). If alternate means of odor and vector control is proposed, this information shall be submitted for ADEM approval.

D. Cherokee shall immediately implement actions to minimize spillage and prevent tracking of by-product material on public roads when exiting land application sites and/or storage areas. Any noted spillage/vehicle tracking should be removed in a timely manner to limit the impact to the environment. Excessive spillage/tracking may require immediate action to limit impact.

E. Cherokee shall ensure that all future Operation Plans submitted will indicate the actions that will be implemented to minimize spillage and prevent tracking. The plans should also indicate that any by-product material tracked off-site will be removed and not swept off the roadway.

F. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Distributor for the violations cited herein.

G. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against the Registrant for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

H. 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.

I. 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.

J. For purposes of this Consent Order only, the Registrant 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.

K. 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 Registrant shall not object to such future orders,

ligation, or enforcement action based on the issuance of this Consent Order if future orders, ligation, or enforcement action address new matters not raised in the Consent Order.

L. The parties agree that this Consent Order shall not affect the Registrant'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.

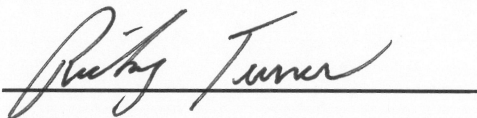
N. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction of the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and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

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

Executed in duplicate, with each part being an original.

Cherokee Environmental Resources, LLC

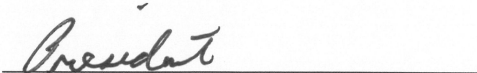
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur

Director



(Printed Title)

(Date Signed)

4-5-24

(Date Signed)

Attachment A

Cherokee Environmental Resources, LLC

Boaz, Alabama

Registration BUD0000-056902

| Violation* | Number of Violations* | Seriousness of Violation* | Standard of Care* | History of Previous Violations* | |
|---|-----------------------|---------------------------|-------------------|---------------------------------|-------------------------------|
| Failure to abide by staging/storage requirements for FPR material. [8/24/23 NOV, 9/26/23 Inspection Report (IR)] | 2 | \$5,000 | \$2,000 | \$5,000 | |
| Failure to abide by land application requirements for FPR material. (8/24/23 NOV, 9/26/23 IR) | 2 | \$15,000 | \$2,500 | \$10,000 | |
| Failure to abide by the 500' drinking well buffer. (8/24/23 NOV) | 1 | \$1,000 | \$500 | | |
| Failure to abide by the 100' surface water buffer. (2/29/24 IR) | 1 | \$1,000 | \$500 | | |
| Failure to abide by Order No. 23-106-CSW as it relates to FPR staging/storage and land application requirements. (9/26/23 IR) | 2 | \$20,000 | \$5,000 | | |
| Failure to abide by approved OP regarding spill/transport requirements for by-product material. (9/26/23 IR) (2/29/24 IR) | 2 | \$2,000 | \$1,000 | | |
| | | | | | Total of Three Factors |
| TOTAL PER FACTOR | | \$44,000 | \$11,500 | \$15,000 | \$70,500 |

| Adjustments to Amount of Initial Penalty | |
|--|-----------------|
| Mitigating Factors (-/+) | \$0 |
| Ability to Pay (-/+) | \$0 |
| Other Factors (-20%) | \$14,100 |
| TOTAL ADJUSTMENTS | \$14,100 |

| | |
|---------------------------|-----------------|
| Economic Benefit (-/+) | \$0 |
| Amount of Initial Penalty | \$70,500 |
| Total Adjustments (-/+) | -\$14,100 |
| FINAL PENALTY | \$56,400 |