

ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Perry County Associates, LLC
Arrowhead Landfill
Uniontown, Perry County, Alabama
Solid Waste Disposal Permit No. 53-03

Consent Order No. 22-XXX-CSW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Perry County Associates, LLC (hereinafter "Permittee") a domestic limited liability company, 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.

STIPULATIONS

1. The Permittee operates a municipal solid waste landfill, known as the Arrowhead Landfill (hereinafter "landfill") in Uniontown, Perry 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-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.

DEPARTMENT'S CONTENTIONS

4. On July 6, 2006, the Department issued initial Solid Waste Permit Number 53-03 to Perry County Associates, LLC. On February 10, 2017, the Department issued a renewal of

Solid Waste Permit No. 53-03 to the Permittee for the operation of the landfill located at 622 Tayloe Road, Uniontown, Perry County, Alabama.

5. On March 1 and March 2, 2022, Department personnel conducted a site visit at the Permittee's landfill to determine compliance with Division 13 of the ADEM Administrative Code following complaints submitted on February 11, 2022. During the site visits, Department personnel documented the following alleged violations:

A. ADEM Admin. Code r. 335-13-4-.22(1)(a)1. requires that a minimum of six inches of compacted earth or alternative cover material approved by the Department be added at the conclusion of each day's operation. Section III.H. of Solid Waste Permit No. 53-03 allows for the use of various alternate daily cover materials; however, the entire waste mass must be covered with six inches of compacted earth (soil) at the conclusion of each week's operation. The March 1, 2022 site visit was conducted at the end of the day. Cover activities were underway at the time using automobile shredder fluff (ASR), which is an approved alternate cover material. However, during the site visit conducted during the early morning hours of March 2, 2022, it was noted that the entire waste mass had not been covered at the conclusion of the previous day's operation with alternative cover material or earthen cover (soil).

B. ADEM Admin. Code r. 335-13-4-22(1)(b) and Section III.J. of the facility permit require that all waste be confined to as small an area as possible, within a single working face. Due to the lack of cover, the working face was large and not confined to as small an area as possible at the time of the site visit. The working face is defined as those areas of the landfill actively receiving waste for compaction and cover. Because areas of the active cell had not been adequately covered with alternate daily cover nor weekly earthen cover at the conclusion of the previous week's operation, these areas were considered part of the working face.

C. ADEM Admin. Code r. 335-13-4-.22(1)(a)2. states that in the event that erosion develops on previously covered disposal areas, or when covered waste otherwise becomes exposed, cover must be re-applied to comply with the minimum cover requirements. During the site visit, uncovered waste was observed on multiple slopes of currently active and inactive cells, most notably at the toe of the slopes along the edge of cover. In addition, landfill slopes near the

new cell construction area had been disturbed by relocating previously covered waste to gain access to the rain flap for liner tie-in, resulting in large amounts of exposed waste along the edge of the slope.

D. ADEM Admin. Code r. 335-13-4-.21(1)(a) states that the landfill shall be operated as stipulated in the permit. Section I.F. of the facility permit states that the facility shall be operated and maintained to minimize the possibility of any unplanned sudden or nonsudden release of contaminants (including leachate) to air, soil, groundwater, or surface water. During the site visit, pooled contact water, which is considered leachate, was noted at the toe of the southeastern portion of the active cell.

E. ADEM Admin. Code r. 335-13-4-.21(1)(a) states that the landfill shall be operated as stipulated in the permit. Section III.H.4. of the facility permit states that ASR should not be used on exterior landfill slopes. Run-off from this material should be routed to the leachate collection system, rather than the stormwater conveyance system. During the site visit, ASR was noted along the upper half of the western slope and no control measures were in place to prevent run-off from this material to enter the stormwater conveyance system.

6. On March 8, 2022, the Department received correspondence following the March 1 and March 2, 2022 site visits providing photographic documentation that cover material had been applied on areas that were noted as uncovered. However, one of the pictures of the working face taken on March 4, 2022 (at the end of the week) shows alternate cover material was used rather than earthen cover as required by Section III.H.4. of the facility permit.

7. On March 21, 2022, Department personnel conducted a site visit at the Permittee's landfill as a follow-up to the March 1 and March 2, 2022 site visits. During the visit, Department personnel documented the following alleged violations:

A. ADEM Admin. Code r. 335-13-4-.22(1)(a)1. and Section III.H. of the facility permit require that a minimum of six inches of compacted earth or alternative cover material approved by the Department be added at the conclusion of each day's operation. The site visit was conducted during the early morning hours on a Monday (the beginning of the week), before waste disposal commenced. The waste mass in the vicinity of the tipping pad had not been covered

with earthen cover (nor with alternate cover) at the conclusion of the previous week's operation. In addition, areas of the active cell that were previously covered with ASR (identified as the landfill face and the western slope) had not been covered with earthen cover as required by the facility permit.

B. ADEM Admin. Code r. 335-13-4-22(1)(b) and Section III.J. of the facility permit require that all waste be confined to as small an area as possible, within a single working face. Due to the lack of cover, the working face was large and not confined to a small area. The working face is defined as those areas of the landfill actively receiving waste for compaction and cover. Because areas of the active cell had not been adequately covered with alternate daily cover nor weekly earthen cover at the conclusion of the previous week's operation, these areas were considered part of the working face.

C. ADEM Admin. Code r. 335-13-4-.22(1)(c) and Section III.I. of the facility permit require that waste be thoroughly compacted before daily cover is applied. The exposed waste mass had not been compacted at the conclusion of the previous day's operation. Waste was actively being spread and compacted in and around the working face at the time of the inspection.

D. ADEM Admin. Code r. 335-13-4-.22(1)(a)2. states that in the event that erosion develops on previously covered disposal areas, or when covered waste otherwise becomes exposed, cover must be re-applied to comply with the minimum cover requirements. During the site visit, uncovered waste was observed on multiple slopes of currently active and inactive cells, most notably at the toe of the slopes along the edge of cover. In addition, landfill slopes near the new cell construction area had been disturbed by relocating previously covered waste to gain access to the rain flap for liner tie-in, resulting in large amounts of exposed waste along the edge of the slope.

E. ADEM Admin. Code r. 335-13-4-.21(1)(a) states that the landfill shall be operated as stipulated in the permit. Section I.F. of the facility permit states that the facility shall be operated and maintained to minimize the possibility of any unplanned sudden or nonsudden release of contaminants (including leachate) to air, soil, groundwater, or surface water. During

the site visit, the area that was noted to have pooled leachate during the March 1 and March 2, 2022 site visits had been regraded using ASR, however small amounts of pooled liquid, which had the appearance of leachate, was still visible in the area.

F. ADEM Admin. Code r. 335-13-4-.21(1)(a) states that the landfill shall be operated as stipulated in the permit. Section III.H.4. of the facility permit states that ASR should not be used on exterior landfill slopes. Run-off from this material should be routed to the leachate collection system, rather than the stormwater conveyance system. During the site visit, ASR was noted along the upper half of the western slope and no control measures were in place to prevent run-off from this material to enter the stormwater conveyance system. As a result, pooled liquid, which had the appearance of leachate, was noted at the toe of the western slope directly below the ASR cover material.

8. On March 23, 2022, the Department issued a Notice of Violation (hereinafter "NOV") to the Permittee addressing the alleged violations noted above.

9. On March 25, 2022, Department personnel conducted an inspection at the Permittee's landfill to determine compliance with Division 13 of the ADEM Administrative Code. During the inspection, Department personnel documented the following alleged violations:

A. ADEM Admin. Code r. 335-13-4-.22(1)(a)1. and Section III.H. of the facility permit require that a minimum of six inches of compacted earth or alternative cover material approved by the Department be added at the conclusion of each day's operation. A small area of uncovered waste was noted on the northern slope.

B. ADEM Admin. Code r. 335-13-4-.22(1)(a)2. states that in the event that erosion develops on previously covered disposal areas, or when covered waste otherwise becomes exposed, cover must be re-applied to comply with the minimum cover requirements. During the inspection, erosion rills with exposed waste were noted along the eastern slope of the landfill.

C. ADEM Admin. Code r. 335-13-4-.21(1)(a) states that the landfill shall be operated as stipulated in the permit. Section I.F. of the facility permit states that the facility shall be operated and maintained to minimize the possibility of any unplanned sudden or nonsudden release of contaminants (including leachate) to air, soil, groundwater, or surface water. During

the inspection, a leachate seep was noted at the toe of the eastern slope. The leachate had reached the drainage ditch adjacent to the eastern slope.

10. On April 7, 2022, the Department received a response to the March 23, 2022 NOV. The response documented remedial actions that had been performed at the landfill to address the noted violations.

11. During the early morning hours of April 11, 2022, Department personnel conducted a site visit at the Permittee's landfill as a follow-up to the March 21, 2022 site visit and to investigate complaints submitted between April 5 and April 10, 2022. During the visit, Department personnel documented that the previously noted alleged violations had been addressed. No additional issues were noted during the visit.

12. On May 9, 2022, Department personnel conducted a site visit at the Permittee's landfill to investigate complaints submitted on April 14, 2022. No issues were noted during the visit.

13. On June 30, 2022, Department personnel conducted an inspection at the Permittee's landfill to determine compliance with Division 13 of the ADEM Administrative Code. No issues were noted during the inspection.

14. 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 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. 53-03 regarding landfill operations.

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 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 Permittee took steps to correct violations noted in the March 23, 2022 NOV upon receipt of the NOV. The Department is unaware of any other efforts employed by the Permittee to mitigate potential effects upon the environment that may have been created as a result of the violations listed herein.

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 to the State of Alabama (see Attachment A).

15. 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

16. 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 amounts specified herein.

17. The purpose of these contentions is to address the Permittee's subsequent actions after the March 23, 2022 NOV and to document additional steps the Permittee has undertaken to address any situation that may have contributed to the alleged violations as highlighted in the NOV.

18. The Permittee contends that no disease vectors were observed by ADEM personnel during the March 25, 2022 inspection and no odors were detected beyond the immediate area of the working face. Additionally, notes made during the April 11, 2022 site visit indicated that the violations alleged in the NOV and during the March 25, 2022 inspection (which were not included in the NOV) had been corrected. No disease vectors were observed and no odors were detected by ADEM personnel during the inspection beyond the immediate area of the working face where odor was deemed "barely detectable". Furthermore, during the May 9, 2022 site visit, Department personnel noted that the entire waste mass had been covered with earth at the conclusion of the previous week's operation, that there were no areas of uncovered waste, that the working face was appropriately sized for the time of day and facility personnel were actively covering portions of the working face with ASR while waste disposal was taking place. Tarps had been placed near the working face for end of day cover if needed. No disease vectors were observed by ADEM personnel during the site visit and no odors were detected beyond the immediate area of the working face. On June 30, 2022, no disease vectors were observed by ADEM personnel during the inspection and no odors were detected beyond the immediate area of the working face.

19. The Permittee has also documented that the following unique circumstances occurred immediately prior to the alleged violations noted in the NOV: a) equipment failures that prevented proper placement of daily and weekly cover, b) unusual and intense storms in

March that caused some cover soil erosion in isolated areas, and c) new Cell 7 construction that required the relocation and construction of a new access road which disturbed some previously covered interior cell slopes. Despite the confluence of these unique circumstances, all alleged issues in the NOV were resolved within 48 hours of receipt of the NOV, and within 24 days of ADEM's initial March 1 inspection.

20. The Permittee committed to the Department that it would have (and in fact has now acquired) redundant equipment¹, such that the potential for the re-occurrence of the circumstances that led to the NOV can be greatly reduced or eliminated. The Permittee has no history of similar violations at the site.

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), 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 Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Department assessed a total penalty in the amount of \$30,600.00 for this Consent Order. Except as allowed for in Paragraph B below, the Permittee shall pay to the Department a civil penalty in the amount of \$30,600.00 in settlement of the violations alleged herein within **forty-five days** after issuance of this Order. If the Permittee elects to perform the Supplemental Environmental Project ("SEP") as detailed in Paragraph B below, the Permittee shall pay to the Department a penalty in the amount of \$7,500.00 within **forty-five days** of issuance of this Consent Order. Failure to pay the civil penalty within forty-five days from issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty. An additional payment of up to \$23,100.00 may be required if the SEP detailed in Paragraph B below is not completed.

¹ Permittee has since 2019, expended over \$5.5 million on new landfill equipment.

B. The 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 Consent Order number of this action.

B. The Permittee has proposed to implement a SEP by making a monetary payment to the Perry County Commission, to be used to pave Tayloe Road from the facility entrance to US Highway 80. This is expected to lessen the impact to the community by reducing the amount of dust generated by trucks accessing the landfill, which is the source of many citizen complaints. Further, the Permittee agrees to submit to the Department, so that it is received no later than **sixty days** after the effective date of this Order, unless extended in writing, a signed agreement between the Permittee and the Perry County Commission, for review and approval, documenting that the monetary payment has been made to the Perry County Commission with the stipulation and agreement from the Perry County Commission that the money will be used for the intended use outlined in the SEP. The plan shall also include a schedule to be implemented such that the proposed work detailed in the SEP is completed no later than one year from the issuance of this Order. The Permittee shall prepare and submit detailed quarterly Progress Reports to the Department describing the Permittee's progress with the SEP, if approved. This SEP may, at the sole discretion of the Department, offset a portion of the penalty at a rate of \$1 of penalty offset for every \$1.50 spent on the SEP, but in no event shall the penalty be offset below \$7,500.00. Documentation of all SEP expenses shall be submitted to the Department for review and concurrence in determining the amount of the penalty offset no later than thirty days after the accepted completion date of the SEP or the completion of the SEP, whichever is earlier. Any total SEP value exceeding \$34,650.00 shall be at the discretion of the Permittee. If the SEP is not acceptable to the Department, then the remainder of the total penalty referenced in

Paragraph A above (\$23,100.00) shall be due within forty-five days of the Permittee's receipt of the Department's notification that the SEP is not acceptable.

C. 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 53-03.

D. That, no later than **sixty days** following the issuance of this Order, the Permittee shall submit a Corrective Action Plan to the Department. The Corrective Action Plan shall address any steps (including preventative maintenance measures) that have been or will be taken to ensure the noted violations do not recur. The Corrective Action Plan should include a schedule for implementation of recommended actions to address the deficiencies outlined in this Order. 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 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.

E. 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.

F. 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.

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

H. 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.

I. 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.

J. 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 not hereby waive any hearing on the terms and conditions of this Consent Order.

K. 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.

L. 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.

M. The parties 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.

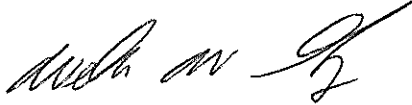
N. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

O. 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.

PERRY COUNTY ACCOCIATES, LLC



(Signature of Authorized Representative)

William W Gay

(Printed Name)

President

(Printed Title)

10/28/22

(Date Signed)

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur, Director

(Date Signed)

Attachment A
Arrowhead Landfill
Uniontown, Perry County
Solid Waste Disposal Permit # 53-03

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to cover waste daily/weekly (3/2/22 and 3/21/22)	2	\$6,000	\$4,000	\$0	
Failure to properly confine waste (3/2/22 and 3/21/22)	2	\$2,000	\$1,000	\$0	
Failure to operate as stipulated in permit (prevent release/leachate seep) (3/2/22, 3/21/22 and 3/25/22)	3	\$3,000	\$1,500	\$0	
Failure to operate as stipulated in permit (ASR on exterior landfill slopes) (3/2/22 and 3/21/22)	2	\$6,000	\$4,000	\$0	
Failure to compact waste (3/21/22)	1	\$500	\$250	\$0	
Failure to cover exposed waste (previously covered waste) ((3/2/22 and 3/21/22)	2	\$6,000	\$4,000	\$0	
					Total of Three Factors
TOTAL PER FACTOR		\$23,500	\$14,750	\$0	\$38,250

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	-\$7,650
Total Adjustments (+/-)	-\$7,650
<i>Enter at Right</i>	

Economic Benefit* (+)	\$0
Amount of Initial Penalty	\$38,250
Total Adjustments (+/-)	-\$7,650
FINAL PENALTY	\$30,600

Footnotes See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.
 *Economic benefit determined by estimating approximate avoided costs for failing to cover and airspace gained through such action.