



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

FEB - 2 2016

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Mike Hester  
Regulatory Affairs Coordinator  
Cherokee Nitrogen, LLC  
1080 Industrial Drive  
P.O. Box 250  
Cherokee, Alabama 35616

Re: Cherokee Nitrogen, LLC  
Consent Agreement and Final Order  
CAA-04-2015-8015(b)

Dear Mr. Hester:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2015-8015(b)) involving Cherokee Nitrogen, LLC. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Ms. Erika White at (404) 562-9195.

Sincerely,

A handwritten signature in blue ink that reads "Anthony G. Toney".

Anthony G. Toney  
Chief  
Chemical Safety and Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF: )  
 )  
 Cherokee Nitrogen, LLC )  
 )  
 Respondent )  
 \_\_\_\_\_ )

Docket Number: CAA-04-2015-8015(b)

USEPA REGION 4  
OFFICE OF REGIONAL  
COUNSEL  
2016 FEB -2 AM 8:25  
HEARING CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Consolidated Rules), published in 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency. Respondent is Cherokee Nitrogen, LLC (hereinafter, "Respondent").

2. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under the CAA to the Regional Administrators by the EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides and Toxics Management Division. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18, and agree to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

**II. Preliminary Statements**

3. Respondent does business in the State of Alabama.

4. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is therefore subject to the provisions of the CAA and regulations promulgated there under.

5. Respondent operates a "stationary source" as that term is defined by Section 302(z) of the CAA, 42 U.S.C. § 7602(z). The Respondent's stationary source is located at 1080 Industrial Drive, Cherokee, Alabama 35616.

6. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

7. Pursuant to Section 112(r)(3) and 112(r)(7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 CFR Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 CFR § 68.130.

8. The Respondent, at its stationary source identified in Paragraph 5 of this CAFO, has five RMProgram covered processes. The letdown area process, the urea process, and the high pressure solutions process store or otherwise use ammonia in an amount exceeding its applicable threshold of 10,000 pounds; the chlorine addition process stores or otherwise uses chlorine in an amount exceeding its applicable threshold of 2,500 pounds; and the sulfur dioxide addition process stores or otherwise uses sulfur dioxide in an amount exceeding its applicable threshold of 5,000 pounds.

9. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 CFR §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 CFR § 68.3, must develop an RMProgram accidental release prevention program, and submit a single Risk Management Plan (RMPlan) to the EPA, which includes the registration required by 40 CFR § 68.160.

10. Respondent has developed an RMProgram accidental release prevention program for the stationary source identified in Paragraph 5 of this CAFO and the covered processes identified in Paragraph 8, and has submitted an RMPlan, which included a registration, to the EPA for such stationary source and covered processes.

11. Based on an RMProgram compliance monitoring investigation initiated by EPA on May 20, 2013, the EPA alleges that the Respondent violated the codified rules governing the CAA Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 CFR Part 68 when it:

Failed to estimate the population that would be included in the distance to the endpoint based on a circle with the point of release at the center when defining offsite impacts as required by 40 CFR § 68.30(a);

Failed to identify environmental receptors that would be included in the distance to the endpoint based on a circle with the point of release at the center when defining offsite impacts as required by 40 CFR § 68.33(a);

Failed to document safe upper and lower limits for such items as temperatures, pressures, flows or compositions as required by 40 CFR § 68.65(c)(1)(iv);

Failed to document piping information and instrumentation diagrams pertaining to equipment in the process as required by 40 CFR § 68.65(d)(1)(ii);

Failed to address consequences of deviations from operating limits in the written operating procedures as required by 40 CFR § 68.69(a)(2)(i).

Failed to address steps to correct or avoid deviations from operating limits in the written operating procedures as required by 40 CFR § 68.69(a)(2)(ii);

Failed to ensure that equipment as it was fabricated is suitable for the process application for which it will be used in construction of new plants and equipment as required by 40 CFR § 68.73(f)(1);

Failed to ensure that maintenance materials, spare parts and equipment were suitable for the process application for which they would be used as required by 40 CFR § 68.73(f)(3);

Failed to establish a system to address and resolve the incident report findings and recommendations, and document the resolutions and corrective actions as required by 40 CFR § 68.81(e).

### **III. Consent Agreement**

12. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

13. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

14. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

15. Respondent certifies that as of the date of execution of this CAFO, to the best of the Respondent's knowledge after a good faith inquiry, it is compliant with the applicable requirements of Section 112(r) of the CAA.

16. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither the EPA nor Complainant waives any right to bring an enforcement

action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

17. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the RMProgram.

#### **IV. Final Order**

18. Respondent agrees to pay a civil penalty of **TWENTY SIX THOUSAND TWO HUNDRED FIFTY DOLLARS (\$26,250)**, to be paid within thirty (30) days of the effective date of this CAFO.

19. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," to one of the following addresses:

For payment sent via electronic transfer

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, New York 10045

Field Tag 4200 of the Fedwire message should read:

"D 68010727 Environmental Protection Agency";

For payment sent via U.S. Postal Service

U.S. Environmental Protection Agency

Cincinnati Finance Center

PO Box 979077

St. Louis, MO 63197-9000; or

For payment sent via overnight mail service (FedEx, UPS)

U.S. Environmental Protection Agency

Cincinnati Finance Center

1005 Convention Plaza

Mail Station SL-MO-C2GL

St. Louis, MO 63101

Contact: Natalie Pearson @ 314-425-1818.

The check shall reference on its face the name and the Docket Number of the CAFO.

20. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Erika White  
Chemical Management and Emergency  
Planning Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

21. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such penalty payment shall constitute a violation of this CAFO.

#### **V. Supplemental Environmental Project**

22. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall expend no less than **NINETY EIGHT THOUSAND FIVE HUNDRED SEVENTY- FIVE DOLLARS (\$98,575)** for the purchase of the following equipment for donation to the Colbert County HAZMAT Team and the Cherokee Volunteer Fire Department:

##### Colbert County HAZMAT Team

<u>Quantity</u>	<u>Description</u>
25	60-minute 4,500 psi Carbon Fiber Survivair Cylinders

##### Cherokee Volunteer Fire Department

<u>Quantity</u>	<u>Description</u>
25	LION V-Force Bi-Swing Coat PBI Max, K7 Liner
25	LION V-Force Hi-Back Pant PBI Max, K7 Liner
25	LION Conway American Classic Helmet, 4" Face Shield
25	Custom Leather Front Medallion
25	PGI Cobra Ultimate Hood-Carbon Shield, 2-ply, Black, Long
25	Shelby Pigskin Cowhide Glove, RT7100, Gauntlet, NFPA
25	Weinbrenner Knockdown Elite 14" Leather Boot

This CAFO shall not be construed to constitute EPA's endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

23. Respondent certifies that:

- a. all cost information provided to the EPA in connection with the EPA's approval of the SEP described in paragraph 22 is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is **\$98,575**.
- b. the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO.

24. Respondent also certifies that:

- a. It is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in paragraph 22; and
- b. It has inquired of the Colbert County HAZMAT Team and Cherokee Volunteer Fire Department whether the Colbert County HAZMAT Team or Cherokee Volunteer Fire Department is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Colbert County HAZMAT Team and Cherokee Volunteer Fire Department that it is not a party to such a transaction.

25. Respondent further certifies that, as of the date this CAFO is signed, it is not required to perform or develop any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant, or as injunctive relief awarded in any other action in any forum. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind, and Respondent will not receive reimbursement for any portion of this SEP from another person or entity.

26. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraphs 22 and 27. If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to Paragraphs 28 and 29.

27. No later than sixty (60) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the Chemical Management and Emergency Planning Section, to the attention of Erika White at the address provided above in Paragraph 20. The Report shall include the following:

- (a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than **\$98,575**, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 22.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

28. If Respondent fails to timely and fully complete the SEP in accordance with Paragraph 22, including failure to spend the minimum amount of **NINETY EIGHT THOUSAND FIVE HUNDRED SEVENTY- FIVE DOLLARS (\$98,575)**, Respondent shall pay to the United States, a stipulated penalty of the difference between **\$98,575** and the actual SEP expenditure.

29. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

30. For purposes of Paragraphs 26, 28 and 29, the determination whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

31. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violation of Section 112(r) of the Clean Air Act.”

32. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

33. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

34. This CAFO shall be binding upon the Respondent, its successors and assigns.

35. The following individual is authorized to receive service for EPA in this proceeding:

Robert W. Bookman  
U.S. EPA, Region 4  
Air, Pesticides & Toxic Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9169



36. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

**VI. Effective Date**

37. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Cherokee Nitrogen, LLC

By: Don M Phillips Date: 12/17/15

Name: Don M. Phillips (Typed or Printed)

Title: General Manager (Typed or Printed)

U.S. Environmental Protection Agency

By: Carol D. Kembs Date: 1/4/16

Beverly H. Banister

Director

Air, Pesticides and Toxics

Management Division

APPROVED AND SO ORDERED this 28<sup>th</sup> day of January, 2016.

Tanya Floyd

Tanya Floyd  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Cherokee Nitrogen, LLC, Docket Number: CAA- 04-2015-8015(b), on the parties listed below in the manner indicated:

Robert W. Bookman (Via EPA's internal mail)  
U.S. EPA, Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street  
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)  
Senior Attorney  
U.S. EPA Region 4  
Office of Regional Counsel  
61 Forsyth Street  
Atlanta, GA 30303

Mike Hester (Certified Mail—Return Receipt Requested)  
Regulatory Affairs Coordinator  
Cherokee Nitrogen, LLC  
1080 Industrial Drive  
P.O. Box 250  
Cherokee, Alabama 35616

Date: 2-2-16



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511