



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
DIVISION OF ADMINISTRATION  
WATER QUALITY CONTROL DIVISION**

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: MC-14XXXX-X**

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**IN THE MATTER OF:      CHEROKEE METROPOLITAN DISTRICT  
                                 CDPS PERMIT NO. COX-048348  
                                 EL PASO COUNTY, COLORADO**

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The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Cherokee Metropolitan District ("Cherokee"). The Division and Cherokee may be referred to collectively as "the Parties."

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are:
  - a. To establish compliance requirements and criteria for the continued operation of Cherokee's Wastewater Reclamation Facility located at or near 19174 Drennan Road, El Paso County, Colorado Springs, Colorado (the "Facility"); and
  - b. To resolve, without litigation, the alleged violations of the Act cited herein by the Division, and the associated civil penalties.

**DIVISION'S FINDINGS OF FACT AND DETERMINATION OF ALLEGED VIOLATIONS**

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Cherokee, the Facility and Cherokee's compliance with the Act and its Colorado Discharge Permit System ("CDPS") permit.

3. At all times relevant to the alleged violations cited herein, Cherokee was a "Special District" formed in El Paso County, Colorado pursuant to the Colorado Special District Act, §§32-1-101 et seq and 32-4-501 et seq, C.R.S.
4. Cherokee is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
5. The Facility receives and treats approximately 1.59 million gallons per day of domestic sewage generated from the Cimarron Hills area of Colorado Springs, El Paso County, Colorado and from two (2) contract customers: Meridian Service Metropolitan District and Schriever Air Force Base.
6. The Facility consists of a mechanical treatment plant that includes an extended aeration activated sludge biological process, utilizing four sequencing batch reactors for carbon oxidation, nitrification and denitrification, followed by effluent flow equalization, and ultraviolet disinfection. Waste activated sludge is aerobically digested and dewatered utilizing centrifuges. Treated effluent from the Facility is conveyed to a rapid infiltration basin system, approximately four (4) miles east-southeast, and consisting of ten (10) individual infiltration basins.
7. On August 21, 2009, Cherokee applied for coverage under a CDPS individual ground water discharge permit for Discharges to Ground Water from Domestic Wastewater Treatment Works (the "Permit").
8. On May 13, 2010, the Division issued Cherokee Individual Permit Number COX-048348 authorizing Cherokee to discharge effluent wastewater from the Facility to groundwater under the terms and conditions of the Permit. The Permit became effective on June 12, 2010 and is due to expire May 31, 2015.
9. Cherokee commenced operations at the Facility in June 2010 and has continuously operated since that date.
10. The Permit specifies that Cherokee is authorized to discharge effluent wastewater from the Facility to groundwater (Upper Black Squirrel Alluvial Aquifer). No other discharges are authorized by the Permit. The discharge is subject to the specific effluent limitations and other conditions of the Permit.
11. Groundwater is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (101).
12. Section 61.8, 5 CCR 1002-61, states in part that "A permittee must comply with all the terms and conditions of the permit."

**Failure to Comply with Permit Effluent Limitations**

13. Pursuant to Part I.A.1 of the Permit, the discharge from the Facility at outfalls 001A, 050C(L), and 050D(L) should not have exceeded, among other parameters and limitations not listed herein, the effluent limitations specified below:

Point of Compliance	Effluent Parameters	Discharge Limitations			
		30-Day Average	7-Day Average	Monthly Minimum	Daily Maximum
Outfall 001A	5-Day Biochemical Oxygen Demand ("BOD <sub>5</sub> ") (mg/L)	30 mg/L	45 mg/L	-	-
Outfall 001A	BOD <sub>5</sub> Removal (%)	-	-	85%	-
Outfall 001A	Total Suspended Solids ("TSS") (mg/L)	30 mg/L	45 mg/L	-	-
Outfall 001A	TSS Removal (%)	-	-	85%	-
Outfall 001A	Total Inorganic Nitrogen ("TIN") (mg/L)	-	-	-	10 mg/L
Outfalls 050C(L) and 050D(L)	Total Dissolved Solids ("TDS") (mg/L)	400 mg/L	-	-	-

Each point of compliance shown in the above table is as directed in CDPS Permit No. COX-048348 effective June 12, 2010:

- a) Outfall 001A = The Facility's outfall following ultraviolet radiation disinfection and prior to the effluent being conveyed by pipeline to the rapid infiltration basins and mixing with the receiving water.
  - b) Outfalls 050C(L) and 050D(L) = Downgradient monitoring wells located within fifteen (15) feet of the southern (downgradient) boundary of the Facility's property where the rapid infiltration basins are located.
14. Pursuant to Part I.D.1 of the Permit, to provide an indication of the quality of the wastewater being discharged into the Upper Black Squirrel Alluvial Aquifer, Cherokee collects specific samples of the effluent at the monitoring locations specified in the Permit. The analytical results of the samples are summarized and reported to the Division via monthly Discharge Monitoring Reports ("DMRs") which include a certification by Cherokee affirming that the information provided therein is true, accurate and complete, to the knowledge and belief of Cherokee.
15. Cherokee's DMRs submitted to the Division include, among other information and data, the effluent concentration summary data for BOD<sub>5</sub>, BOD<sub>5</sub> Removal, TSS, TSS Removal, TIN, and TDS which

exceeded the effluent limitations imposed by Part I.A.1 of the Permit. These effluent violations are attached as Exhibit A.

16. BOD<sub>5</sub>, BOD<sub>5</sub> Removal, TSS, TSS Removal, TIN, and TDS are each a "pollutant" (or indicator thereof) as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (76).
17. The Permit did not authorize the pollutant discharge levels identified above in paragraph 15 and in Exhibit A and Cherokee does not have any other permits authorizing such discharge into State Waters.
18. Cherokee's failure to comply with the effluent limitations set forth in the Permit and identified above in paragraph 15 and Exhibit A constitutes alleged violations of Part I.A.1 of the Permit.

#### Cherokee's Position on Alleged Violations

19. Cherokee submitted a request for preliminary effluent limitations ("PELs") for the proposed discharge of the Facility to groundwater through rapid infiltration basins on May 2, 2006. The Division responded with a letter dated June 15, 2006 stating the PELs which would apply to that discharge to groundwater. The PELs presented by the Division in the June 15, 2006 letter did not include TDS as an effluent limit for this discharge. Cherokee accomplished the design and preparation of construction documents in accordance with the PELs set forth in the June 15, 2006 letter. The subsequent site location approval and construction documents approval by the Division for the Facility did not include any statements regarding a requirement for meeting a TDS effluent limit. TDS was presented by the Division as an effluent limit parameter in a draft discharge permit following Cherokee's application for a discharge permit on August 14, 2009. Even though the Facility was not designed or constructed to remove or otherwise control TDS in the effluent, the Division issued a draft permit for public review on March 19, 2010, and a final permit effective June 12, 2010, containing effluent limits for TDS.
20. In response to the TIN discharge permit violations occurring in early 2011, Cherokee's initial investigations indicated that the anoxic treatment periods may not have been long enough and the process may be carbon deficient. Cherokee implemented process changes to increase the anoxic treatment periods and experimented with feeding supplemental carbon, in the form of methanol, during the anoxic periods. These process modifications initially showed positive results, with the effluent TIN concentration steadily dropping from 34.0 mg/L in March 2011 to 11.8 mg/L in June 2011. Cherokee was in the process of installing equipment that would allow methanol to be fed on a more consistent basis to improve the performance of the denitrification process in June 2011 when the Division informed Cherokee that adding methanol would likely be a change in the treatment process and therefore require an amendment to the site location approval and design, plan and specification review and approval by the Division. Cherokee advocated the immediate implementation of a methanol feed and expressed its concern to the Division that the effluent would not be in compliance with the TIN limitation until process modifications could be implemented. Cherokee's *Pilot/Full Scale Demonstration Project – Methanol Addition as a Carbon Source* was authorized by the Division on May 24, 2012 and Cherokee commenced operation of the demonstration project on June 15, 2012. If a mechanism was in place that allowed the Division to immediately authorize the implementation of Cherokee's methanol feed in early July 2011, the TIN limitation exceedences that occurred from July 2011 through June 2012 might have been avoided.

21. The Division finds that Cherokee's position statement, including the additional statements documented in CMD's January 17, 2014 letter to the Division, are not entirely consistent with the information gathered in the course of the Division's inspections and investigation of the incidents described herein and the inclusion of Cherokee's position statement in this order should not be construed to constitute any admission or agreement by the Division as to the content of the position statement.

### **ORDER AND AGREEMENT**

22. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the alleged violations cited herein, the Division orders Cherokee to comply with all provisions of this Consent Order, including all requirements set forth below.
23. Cherokee agrees to the terms and conditions of this Consent Order. Cherokee agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Cherokee also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Cherokee against the Division:
- a. The issuance of this Consent Order;
  - b. The factual and legal determinations made by the Division herein; and
  - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
24. Notwithstanding the above, Cherokee does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Cherokee pursuant to this Consent Order shall not constitute evidence of fault and liability by Cherokee with respect to the conditions of the Facility.

### **Compliance Actions and Requirements**

25. Cherokee shall immediately implement measures to attain compliance with the Colorado Water Quality Control Act and the terms and conditions of the Permit.

### **Schedule to Meet Total Inorganic Nitrogen Effluent Limit**

26. Cherokee implemented a *Pilot/Full Scale Demonstration Project-Methanol Addition as a Carbon Source* ("Demonstration Project"), as initially authorized by the Division on May 24, 2012 with a subsequent authorization for an extension to December 31, 2013. The full-scale Demonstration Project was intended to provide for the addition of supplemental carbon to improve the denitrification process, modify the manner in which air delivery to the pre-react basin is accomplished to enhance anoxic conditions and provide for internal recycle in the aeration basin to the pre-react zone. Cherokee submitted a request to the Division to continue the Demonstration Project past December 31, 2013 to September 30, 2014. On November 26, 2013, the Division extended authorization to operate the Demonstration Project to May 24, 2014, which is two years after the initial authorization to operate the Demonstration Project.

27. On July 17, 2013, Cherokee submitted an Application for Amendment of an Existing Site Location Approval to incorporate modifications to the activated sludge system to enhance and improve performance of the denitrification process. The Division approved the Application for Amendment on September 27, 2013. The Amendment authorized Cherokee to proceed with implementation of permanent improvements for application of methanol as a supplemental carbon source to enhance the denitrification process at the Facility.
28. In accordance with the Division's WPC Policy DR-1, Cherokee submitted a Process Design Report ("PDR") to the Division on November 26, 2013, addressing the permanent improvements to the Facility to facilitate the addition of methanol as a supplemental carbon source. By April 30, 2014, Cherokee shall submit a certification of the design and construction documents (plans and specifications) in accordance with the "streamlined design review process" specified by Water Quality Control Commission ("WQCC") Regulation No. 22.
29. Upon receipt and acceptance of the certification of design and construction documents submitted by Cherokee for the Facility improvements to add supplemental carbon referenced in Paragraph 28, the Division will provide Cherokee authorization to continue the Demonstration Project until August 31, 2014 during which time Cherokee will implement the permanent improvements to the Facility.
30. Within sixty (60) days of the Division's approval of the PDR and the plans and specifications for the new preliminary treatment facility, Cherokee shall initiate construction of the new preliminary treatment facility. Cherokee shall submit quarterly progress reports to the Division outlining the progress of the preliminary treatment facility construction. At a minimum, each report shall outline activities undertaken in the current reporting period and planned activities for the next three (3) months to remain in compliance with this Consent Order.

#### Schedule to Meet Total Dissolved Solids Effluent Limit

31. Within thirty (30) days of the effective date of this Consent Order, Cherokee shall commence a technical assessment of the suitability and effectiveness of accomplishing Total Dissolved Solids ("TDS") removal in its source water supply as a means of controlling TDS discharge from the Facility. This will include blending with new source water supplies presently being developed and source water treatment. The assessment of alternative approaches for TDS control will also include evaluation of TDS control at the Facility's biological process discharge. Additionally, Cherokee shall prepare a summary report of the findings of the assessment of the suitability and effectiveness of accomplishing TDS removal in its source water supply and submit this report to the Division.
32. Within one hundred eighty (180) days of the effective date of this Consent Order, Cherokee shall complete the assessment of technically feasible approaches to control TDS in the Facility's effluent, as required by Paragraph 31 of this Consent Order addressing financial and cost-benefit impacts, operational impacts with particular attention to the requirements for management of residuals from the TDS control processes, legal issues and impacts from conditions of well permits, decrees and other water resource management and use agreements, water use efficiency, institutional constraints and other identified issues which will influence the selection of a TDS control strategy for implementation. Additionally, Cherokee shall prepare a summary report of the findings of the assessment described in this paragraph and submit to the Division.

33. Within two hundred ten (210) calendar days of the effective date of this Consent Order, Cherokee shall submit to the Division an implementation plan for a selected TDS control strategy, as addressed in Paragraphs 31 and 32. The submitted plan shall become a condition of this Consent Order and Cherokee shall comply with the plan as submitted unless notified by the Division, in writing within sixty (60) calendar days of the submittal, that modifications or an alternate plan or program is appropriate. If the Division imposes modifications or an alternate plan or program, it shall also become a condition of this Consent Order.
34. Within sixty (60) days of the effective date of this Consent Order, Cherokee shall submit a summary report of the review and an update of the dynamic groundwater model of the Black Squirrel Creek alluvial aquifer in the vicinity of the rapid infiltration basins to which the Facility discharges. Cherokee shall analyze the variation in the groundwater phreatic surface as a result of application of treated wastewater in the rapid infiltration basins and pumping of production wells upstream and downstream, and laterally from the rapid infiltration basins.
35. Within thirty (30) days of the effective date of this Consent Order, Cherokee shall complete development of a customer education program expressed as Best Management Practices to maximize the efficiency of home water softeners for purposes of minimizing wastewater generated from the ion exchange resin regeneration process. The primary means of education will be through Cherokee's customer newsletter. Outreach and educational tools shall also be developed for implementation of Best Management Practices for TDS control in nonresidential wastewater contributions. Cherokee shall publish the consumer education program in the customer newsletter no less than semi-annually.
36. Within forty-five (45) days of the effective date of this Consent Order, Cherokee shall develop design and construction documents for new groundwater monitoring wells at or near Cherokee's property boundary and submit to the Division for approval. Within one hundred twenty (120) days following Division approval of the new groundwater monitoring well location's design and construction documents, Cherokee shall complete construction of the modified groundwater monitoring system.
37. Within one hundred eighty (180) days of the effective date of this Consent Order, Cherokee shall complete an assessment of the local limits in its pretreatment program addressing TDS and other constituents of concern in accordance with USEPA Region 8 guidance for development of local limits. Additionally, within two hundred ten (210) days of the effective date of this Consent Order, Cherokee shall prepare a summary report of the findings of the assessment and submit to the Division.
38. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. No plan submitted for Division approval under this Consent Order may be implemented unless and until written approval is received from the Division except as otherwise specified or provided herein. Any approval by the Division of a plan submitted under this Consent Order is effective upon receipt by Cherokee. All approved plans, including all procedures and schedules contained in the plans, are hereby incorporated into this Consent Order, and shall constitute enforceable requirements under the Act.

## CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

39. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, the Division has determined that a penalty of Sixty Three Thousand Seven Hundred Twenty Dollars (\$63,720.00) is appropriate for the violations cited herein.
40. Through the application of the criteria set forth in the Colorado Department of Public Health and Environment's Final Agency-Wide Policy on Settling Administrative and/or Civil Penalties Against Eligible Governmental Entities, the Division has determined the entire penalty can be mitigated through the completion of the following Supplemental Environmental Projects ("SEPs") identified by Cherokee and which are valued at Sixty Nine Thousand Seven Hundred Seventy Five Dollars (\$69,775.00).
41. Cherokee shall undertake the following SEPs, which the Parties agree are intended to secure significant environmental or public health protection and improvements.
42. Cherokee shall spend no less than Sixty Nine Thousand Seven Hundred Seventy Five Dollars (\$69,775.00) on the implementation and completion of energy efficiency/pollution prevention upgrades within the Cherokee service area in El Paso County. The combination of the first and third party SEPs are further described in Exhibit B. If Cherokee completes the energy efficiency/pollution prevention upgrades specified in Exhibit B and does not expend the full Sixty Nine Thousand Seven Hundred Seventy Five Dollars (\$69,775.00), Cherokee may propose an alternate SEP for Division review and approval that accounts for the remaining balance. The alternate SEP proposal shall be submitted to the Division by December 1, 2014.
43. Cherokee shall not deduct the expenses associated with the implementation of the above-described SEPs for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.
44. Cherokee hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEPs. Cherokee further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEPs. In the event that Cherokee has, or will receive credit under any other legal obligation for the SEPs, Cherokee shall pay Sixty Three Thousand Seven Hundred Twenty Dollars (\$63,720.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Michael Harris  
Colorado Department of Public Health and Environment  
Water Quality Control Division  
Mail Code: WQCD-CWE-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530



45. The SEPs must be completed to the satisfaction of the Division by November 30, 2014, and must be operated for the useful life of the SEPs. In the event that Cherokee fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEPs, Cherokee shall be liable for penalties as follows:
  - a. Payment of a penalty in the amount of Sixty Three Thousand Seven Hundred Twenty Dollars (\$63,720.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEPs.
  - b. Cherokee shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 44 above.
46. Cherokee shall submit SEP Completion Reports for each SEP to the Division by December 30, 2014. The SEP Completion Reports shall contain the following information:
  - a. A detailed description of the SEPs as implemented;
  - b. A description of any operating problems encountered and the solutions thereto;
  - c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks or other forms of proof of payment;
  - d. Certification that the SEPs have been fully implemented pursuant to the provisions of this Consent Order; and
  - e. A description of the environmental and public health benefits resulting from implementation of the SEPs (with quantification of the benefits and pollutant reductions, if feasible).
47. Failure to submit the SEP Completion Reports with the required information, or any periodic report, shall be deemed a violation of this Consent Order.
48. Cherokee shall include the following language in any public statement, oral or written, making reference to the SEPs: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for alleged violations of the Colorado Water Quality Control Act."

#### **SCOPE AND EFFECT OF CONSENT ORDER**

49. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the alleged violations cited herein.
50. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Cherokee each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
51. This Consent Order constitutes a final agency action upon a determination by the Division following the public comment period. Any violation of the provisions of this Consent Order by Cherokee, including any false certifications, shall be a violation of a final order or action of the Division for the

purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

52. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
53. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
54. Notwithstanding paragraph 24 above, the alleged violations described in this Consent Order will constitute part of Cherokee's compliance history for purposes where such history is relevant. This includes considering the alleged violations described above in assessing a penalty for any subsequent violations against Cherokee. Cherokee agrees not to challenge the use of the cited alleged violations for any such purpose.
55. This Consent Order does not relieve Cherokee from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

#### **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

56. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of alleged violations cited herein. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
57. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
58. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
59. Upon the effective date of this Consent Order, Cherokee releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the alleged violations of the Act specifically addressed herein.
60. Cherokee shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Cherokee, or those acting for or on behalf of Cherokee, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to

this Consent Order. Cherokee shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Cherokee in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

### **OFFSITE ACCESS**

61. To the extent any plan submitted by Cherokee requires access to property not owned or controlled by Cherokee, Cherokee shall use its best efforts to obtain site access from the present owners of such property to conduct required activities and to allow Division access to such property to oversee such activities. In the event that site access is not obtained when necessary, Cherokee shall notify the Division in writing regarding its best efforts and its failure to obtain such access.

### **SITE ACCESS AND SAMPLING**

62. The Division shall be authorized to oversee any and all work being performed under this Consent Order. The Division shall be authorized access to the Facility property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining Cherokee's compliance with the Act, the Regulations, and this Consent Order. The Division shall be authorized to inspect work sites, operating and field logs, contracts, purchasing/shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview Cherokee personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Facility.
63. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by Cherokee. Cherokee shall notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and shall provide split samples to the Division upon request.
64. Cherokee shall notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. Cherokee shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

### **FORCE MAJEURE**

65. Cherokee shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Cherokee, and which cannot be overcome by due diligence.

66. Within seventy-two (72) hours of the time that Cherokee knows or has reason to know of the occurrence of any event which Cherokee has reason to believe may prevent Cherokee from timely compliance with any requirement under this Consent Order; Cherokee shall provide verbal notification to the Division. Within seven (7) calendar days of the time that Cherokee knows or has reason to know of the occurrence of such event, Cherokee shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.
67. The burden of proving that any delay was caused by a force majeure shall at all times rest with Cherokee. If the Division agrees that a force majeure has occurred, the Division will so notify Cherokee. The Division will also approve or disapprove of Cherokee's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Cherokee's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Cherokee. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, Cherokee may file an objection.
68. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Cherokee shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

#### **DISPUTE RESOLUTION**

69. If the Division determines that that a violation of this Consent Order has occurred, that a force majeure has not occurred; that the actions taken by Cherokee to mitigate the delay caused by a force majeure are inadequate; that Cherokee's Notice of Completion should be rejected pursuant to paragraph 75, or that the Cherokee's SEP Completion Report submitted pursuant to paragraph 46 is deficient, the Division shall provide a written explanation of its determination to Cherokee. Within fifteen (15) calendar days of receipt of the Division's determination, Cherokee shall:
  - a. Submit a notice of acceptance of the determination; or
  - b. Submit a notice of dispute of the determination.

If Cherokee fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

70. If the Division disapproves or approves with modifications any original or revised plan submitted by Cherokee pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within fifteen (15) calendar days of receipt of the Division's approval with modifications or disapproval of the plan, Cherokee shall:
  - a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;

- b. In the case of disapproval only, submit a revised plan for Division review and approval. Cherokee may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by Cherokee; or
- c. Submit a notice of dispute of the disapproval or approval with modifications.

If Cherokee fails to do any of the above within the specified time, Cherokee shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

- 71. If Cherokee submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify Cherokee in writing of its approval, approval with modifications, or disapproval of the revised plan. If the Division disapproves the revised plan, it may include in its disapproval a plan for implementation by Cherokee. Such disapproval and plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S. (the "APA"), unless Cherokee submits a notice of dispute, pursuant to paragraph 70 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division's plan shall not become effective pending resolution of the dispute.

### NOTICES

- 72. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-CWE-B2  
Attention: Michael Harris  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: 303.692.3598  
E-mail: michael.harris@state.co.us

For Cherokee Metropolitan District:

Cherokee Metropolitan District  
Attention: Sean Chambers, General Manager  
6250 Palmer Park Boulevard  
Colorado Springs, Colorado 80915  
Telephone: 719.597.5080  
E-mail: schambers@cherokeemetro.org

### **OBLIGATIONS UNAFFECTED BY BANKRUPTCY**

73. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Cherokee of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Cherokee agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Cherokee and the Facility to achieve and maintain compliance with State law.

### **MODIFICATIONS**

74. This Consent Order may be modified only upon mutual written agreement of the Parties.

### **COMPLETION OF REQUIRED ACTIONS**

75. Cherokee shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Cherokee's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects Cherokee's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. Cherokee shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:
- a. Submit a notice of acceptance of the determination; or
  - b. Submit a notice of dispute.

If Cherokee fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

### **NOTICE OF EFFECTIVE DATE**

76. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following closure of the public comment period referenced in paragraph 50.

### **BINDING EFFECT AND AUTHORIZATION TO SIGN**

77. This Consent Order is binding upon Cherokee and its officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Cherokee agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this

Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

**FOR CHEROKEE METROPOLITAN DISTRICT:**

 Date: May 9, 2014  
Sean Chambers, General Manager

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:**

\_\_\_\_\_ Date: \_\_\_\_\_  
Steven H. Gunderson, Director  
WATER QUALITY CONTROL DIVISION