

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

RECEIVED AUG 15 2019

IN THE MATTER OF:

Giant Resource Recovery-Attalla, Inc.
Attalla, Etowah County, Alabama
USEPA ID NUMBER ALD070513767

Consent Order No. 19-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and Giant Resource Recovery-Attalla, Inc. (hereinafter "Giant Resource Recovery") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter "AHWMMA"), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Giant Resource Recovery-Attalla, Inc. (hereinafter "Giant Resource Recovery") operates a permitted commercial hazardous waste treatment and storage facility with EPA Identification Number ALD070513767, located at 1229 Valley Drive in Attalla, Etowah County, Alabama (hereinafter "the Site"). Giant Resource Recovery, as a result of its operations at the Site, was a permitted hazardous waste storage and treatment facility, a large quantity generator of hazardous waste, a used oil generator, a used oil fuel marketer, and a small quantity handler of universal waste as those terms are defined in ADEM Admin. Code div. 14, at all times relevant to this action.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On March 13, 2019, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection (hereinafter "CEI") of Giant Resource Recovery. The CEI and a review of Giant Resource Recovery's compliance showed the following:

- (a) Pursuant to Permit Condition III.A., the Permittee may operate the units and processes described in Table III.1. of this permit, subject to the terms of this permit. Operation of any process or unit not listed in Table III.1. of this permit is prohibited.

Giant Resource Recovery managed hazardous waste in a unit other than those described in Table III.1 of its Hazardous Waste Facility Permit. Giant Resource Recovery placed one tractor trailer and one tanker trailer, both containing hazardous waste, outside of the waste management units described in Table III.1 of the permit.

- (b) Pursuant to Permit Condition III.C.3., the sampling and staging of incoming containers shall not exceed 72 hours. All container that are to be fingerprinted or are awaiting analysis shall be segregated from other containers in the container storage area. Each container shall be marked with the date of receipt.

~~Giant Resource Recovery failed to mark twenty-four boxes located in the Aerosol~~

Warehouse with the date of receipt that had been onsite for over 72 hours.

- (c) Pursuant to Exhibit 5-1 General Inspection Schedule., container storage areas are required to be inspected for integrity, leaks, spills, and proper labeling.

Giant Resource Recovery failed to label four 5-gallon buckets containing hazardous waste located in the Chemical Warehouse.

5. ADEM Consent Order 19-023-CHW, executed on January 11, 2019, required Giant Resource Recovery to comply with all terms, conditions, and limitations of its permit and the applicable parts of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto. This Order included violations for storage of hazardous waste in an unpermitted area and for failure to mark containers of hazardous waste with the date of receipt, similar to the findings described above in 4.(a) and (b).

6. On May 6, 2019, the Department issued a Notice of Violation to Giant Resource Recovery, which cited violations of the hazardous waste regulations that were discovered during the CEI.

7. On May 28, 2019, the Department received Giant Resource Recovery's response to the May 6, 2019 Notice of Violation.

8. Pursuant to Ala. Code § 22-22A-5(18), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person 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 a violation continues shall constitute a separate violation.~~ In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATIONS:** In arriving at the civil penalty, the Department considered the general nature and magnitude of the violations along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

(b) THE STANDARD OF CARE: In considering the standard of care manifested by Giant Resource Recovery, the Department noted that the violations described above were non-technical and easily avoidable. The Department issued Consent Order 19-023-CHW on January 11, 2019, to address similar violations regarding unpermitted storage of hazardous waste and failure to mark containers of hazardous waste with the date of receipt. Consequently, Giant Resource Recovery has failed to exhibit a standard of care commensurate with the applicable regulatory standards.

(c) ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: ADEM Consent Order 19-023-CHW required Giant Resource Recovery to comply with all applicable statutes, regulations, and the facility's permit. The Department has determined that by continuing to store hazardous waste in unpermitted areas, Giant Resource Recovery has avoided certain costs associated with construction of additional storage capacity at its facility.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects to mitigate as a result of the violations referenced herein.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Giant Resource Recovery has a history of similar violations.

(f) THE ABILITY TO PAY: Giant Resource Recovery has not alleged an inability to pay the civil penalty.

(g) OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty that is warranted in the spirit of cooperation and the desire to resolve this matter

amicably without incurring the unwarranted expense of litigation (see Attachment A, which is made a part of the Department's Contentions).

9. The Department neither admits nor denies Giant Resource Recovery's contentions, which are set forth below. The Department has agreed to the terms of this Special Order by Consent in an effort to resolve the alleged violations cited herein without the unwarranted

expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Special Order by Consent are in the best interest of the citizens of Alabama.

FACILITY'S CONTENTIONS

10. The outbound van trailer and tanker trailer were transported off-site on the date of the Compliance Evaluation Inspection (CEI, March 13, 2019). Giant Resource Recovery (GRR) prepared a manifest for these off-site shipments, and the pre-transportation phase of the shipments was complete. GRR was awaiting the tractor from the transportation company to remove the shipments off-site.

GRR understands the Department's initiative to reduce temporary staging of trailers awaiting off-site transportation. As such, GRR is proceeding with the steps necessary to construct a currently permitted storage area at its facility.

11. GRR immediately labeled the 24 boxes in the aerosols warehouse and the four 5-gallon buckets containing hazardous waste in the chemical warehouse upon discovery during the March 13, 2019, RCRA CEI. GRR has trained a newly designated employee in these responsibilities.

12. Giant Resource Recovery neither admits nor denies the Department's contentions. GRR agrees to the entry of this Special Order by Consent in the interest of resolving this matter without delay and expense of litigation. Giant Resource Recovery consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, Giant Resource Recovery, 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)c. , as amended, as well as the need for timely and effective enforcement and the Department believes that the

following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Giant Resource Recovery agree to enter into this Special Order by Consent with the following terms and conditions:

A. Giant Resource Recovery agrees to pay to the Department a civil penalty in the amount of \$35,000 in settlement of the violations alleged herein within forty-five days of the effective date of this Special Order by Consent. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Giant Resource Recovery agrees that all penalties due pursuant to this Special Order by Consent shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or other payment methods acceptable to the Department and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any payment submitted to the Department pursuant to this Special Order by Consent shall reference Giant Resource Recovery's name and address, and the ADEM Administrative Order number of this action.

C. Giant Resource Recovery agrees that, independent of this Special Order by Consent, it shall comply with all terms, conditions, and limitations of its permit and the applicable parts of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. The Department and Giant Resource Recovery (hereinafter the "parties") agree that this Special Order by Consent 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 Special Order by Consent certifies that he or she is fully authorized by the party he or she represents to

enter into the terms and conditions of this Special Order by Consent, to execute the Special Order by Consent on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Special Order by Consent is intended to operate as a full resolution of the alleged violations cited herein.

F. Giant Resource Recovery agrees that it is not relieved from any liability if it fails to comply with any provision of this Special Order by Consent.

G. For purposes of this Special Order by Consent only, Giant Resource Recovery 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.

H. The parties agree that the sole purpose of this Special Order by Consent 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 Special Order by Consent, 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; Giant Resource Recovery agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement action address new matters not raised in this Special Order by Consent.

I. The parties agree that this Special Order by Consent shall be considered final and effective immediately upon signature of all parties. This Special Order by Consent shall not be appealable, and Giant Resource Recovery does hereby waive any hearing on the terms and conditions of this Special Order by Consent.

J. The parties agree that this Special Order by Consent shall not affect Giant Resource Recovery's obligation to comply with any Federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Special Order by Consent 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.

L. The parties agree that, should any provision of this Special Order by Consent 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.

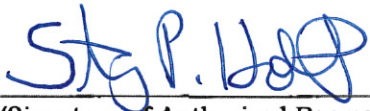
M. The parties agree that any modifications of this Special Order by Consent must be agreed to in writing signed by both parties.

N. The parties agree that, except as otherwise set forth herein, this Special Order by Consent 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 Giant Resource Recovery of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

FACILITY

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**



(Signature of Authorized Representative)

Lance R. LeFleur
Director

Stephen P. Holt
(Printed Name)

Vice President, E, H&S
(Printed Title)

August 16, 2019
(Date Signed)

(Date Executed)

Attachment A
 Giant Resource Recovery
 Attalla, Etowah County
 Facility ID No. ALD070513767

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Storage of hazardous waste in an unpermitted area	1	\$5,000	\$5,000	\$5,000	
Failure to mark containers of hazardous waste with the date of receipt	1	\$100	\$100	\$100	
Failure to properly label containers holding hazardous waste	1	\$100	\$100	\$100	Total of Three Factors
TOTAL PER FACTOR		\$5,200	\$5,200	\$5,200	\$15,600

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	\$27,520
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$15,600
Other Factors (+/-)	(\$8,120)	Total Adjustments (+/-)	(\$8,120)
Total Adjustments (+/-) Enter at Right	(\$8,120)	FINAL PENALTY	\$35,000

Footnotes

* See the "DEPARTMENT'S CONTENTIONS" portion of the Order for a detailed description of each violation and the penalty factors.