

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**P O Box 301463 (Zip 36130-1463)****1400 Coliseum Boulevard (Zip 36110-2059)****Montgomery, Alabama 36130-1463****(334) 271-7700****PROPOSED CONSENT ORDER****Account Code: 421****Etowah County**

Pursuant to the provisions of the Alabama Environmental Management Act, the Alabama Department of Environmental Management is proposing to issue a Consent Order to **Giant Resource Recovery - Attalla, Inc.** (EPA Identification Number **ALD070513767**), which owns/operates an AHWMMMA-permitted hazardous waste treatment and storage facility, located at **1229 Valley Drive in Attalla, Etowah County, Alabama.**

The violations consisted of the following: exceeding the permitted storage capacity in the Compactor Storage Area, storage of hazardous wastes for greater than one year, failure to secure closure devices in the closed position, failure to maintain the Permitted Hazardous Waste Container Storage Area containment system, failure to repair cracks / gaps in the Tank Farm containment system, failure to label containers with accumulation start dates, failure to label the Disperser Tank, failure to document annual structural integrity tests, and failure to document hazardous waste management training.

The Department is proposing a civil penalty in the amount of **\$9,350**. The Order, if issued, would require **Giant Resource Recovery – Attalla, Inc.** to comply with all applicable requirements of Division 14 of the ADEM Administrative Code.

Interested persons may submit written comments, including a request for a hearing, within 30 days of the publication date of this notice to:

Alabama Department of Environmental Management**Attention: Phillip D. Davis, Chief of the Land Division****P. O. Box 301463****Montgomery, Alabama 36130-1463**

The comment period shall end at the close of business 30 days from the publication date of this notice. A copy of the proposed order is available on the ADEM web page at www.adem.alabama.gov/compinfo/adminorders.cnt or may be obtained by written request to the above address. A nominal fee for copying may be charged.

This notice is hereby given **8th day of December 2015**, by authorization of the Alabama Department of Environmental Management.

Lance R. LeFleur
Director

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Giant Resource Recovery-Attalla, Inc.
Attalla, Etowah County, AL
EPA Identification Number ALD070513767**

Consent Order No. 16-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 "GRR", "the Permittee" or "the Facility") 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. GRR operates a commercial hazardous waste treatment and storage facility under AHWMMA Hazardous Waste Facility Permit Number ALD070513767, located at 1229 Valley Drive in Attalla, Etowah County, Alabama. At all times relevant to these findings, GRR was a hazardous waste treatment and storage 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.
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), as amended, 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 January 27 and January 28 of 2015, representatives of the United States Environmental Protection Agency and the Department conducted a compliance evaluation inspection (CEI) of GRR to determine compliance with the conditions of the Facility's AHWMMMA Hazardous Waste Facility Permit and all applicable requirements of Division 14 of the ADEM Administrative Code.

5. Based on the CEI, the Department determined that GRR violated certain requirements of Division 14 of the ADEM Administrative Code and its AHWMMMA Hazardous Waste Facility Permit. Specifically, the Department identified the following violations:

(a) Pursuant to Permit Condition III.C.2, the Compactor Storage Area capacity is distributed among the various container storage areas shown in Table III.1 of the Permit, and as described in Section 4.2 of the permit application. The maximum quantity of hazardous waste stored in each unit or containment area shall not exceed the capacity listed in Table III.1 of the Permit.

GRR exceeded its permitted storage capacity in the Compactor Storage Area. The permitted storage capacity of GRR's Compactor Storage Area is 62,150 gallons or two hundred and twenty six (226) 275-gallon containers. The inspection team documented that two hundred and seventy (270) 275-gallon cardboard boxes and thirty eight (38) 275-gallon plastic totes of hazardous waste aerosol cans were being stored in the Compactor Storage Area at the time of the inspection.

(b) Pursuant to ADEM Admin. Code r. 335-14-9-.05, which incorporates by reference 40 CFR § 268.50(c), the owner or operator of a treatment, storage, or disposal facility may store hazardous wastes beyond one year; however, the owner/operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

GRR stored the following containers of hazardous waste at the Facility for greater than one year: one 275-gallon cardboard box containing hazardous waste aerosol cans in the Aerosol Unit Warehouse, one metal 55-gallon drum of hazardous waste in the Permitted Hazardous Waste Container Storage Area, one 85-gallon overpack drum of hazardous waste in the Permitted Hazardous Waste Container Storage Area, and one 10-gallon overpack container of hazardous waste in the Permitted Hazardous Waste Container Storage Area. GRR failed to demonstrate that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(c) Pursuant to ADEM Admin. Code r. 335-14-5-.29(5), which incorporates by reference 40 CFR § 264.1084(c)(2) and (3), a tank to which 40 CFR § 264 Subpart CC, Air Emissions Standards for Tanks, Surface Impoundments, and Containers, applies must have a fixed roof and each closure device must be secured in the closed position.

GRR did not secure in the closed position closure devices on the roofs of the following hazardous waste storage tanks subject to 40 CFR §264 Subpart CC: Tank 1, Tank 2, Tank 5, Tank 9, and the Disperser Tank.

(d) Pursuant to Permit Condition III.E.2. and ADEM Admin. Code r. 335-14-5-.09(6)(a) and (b)1., a container storage area must have a base underlying the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

GRR did not maintain a sufficiently impervious base underlying the containers in the Permitted Hazardous Waste Container Storage Area. Specifically, the coating on the floor between row A-2 and row A-8 of the Permitted Hazardous Waste Container Storage Area was worn away.

(e) Pursuant to Permit Condition IV.G., the Permittee shall maintain the secondary containment systems for all storage and / or treatment tanks and for all ancillary equipment in accordance with the requirements of ADEM Admin. Code r. 335-14-5-.10(4). ADEM Admin. Code r. 335-14-5-.10(4)(c)1.(iii) requires secondary containment systems to be free of cracks or gaps.

GRR did not maintain the secondary containment system in the Tank Farm in accordance with the requirements of ADEM Admin. Code r. 335-14-5-.10(4). Specifically, cracks and gaps were present in the floor and walls of the secondary containment system.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)2., a large quantity generator may accumulate hazardous waste which is generated on-site for 90 days or less, provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

GRR did not mark the following containers with the date upon which each period of accumulation began: one metal 55-gallon drum of hazardous waste in the Permitted Hazardous Waste Container Storage Area and one fiber 55-gallon drum of hazardous waste in the Permitted Hazardous Waste Container Storage Area. The wastes in these containers were generated on-site by GRR.

(g) Pursuant to ADEM Admin. Code r. 335-14-9-.05, which incorporates by reference 40 CFR § 268.50(a)(2)(ii), the owner or operator of a treatment, storage, or disposal facility may store hazardous wastes restricted from land disposal in tanks provided that each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date that the period of accumulation begins, or such information is recorded and maintained in the operating record at the facility.

GRR did not label the Disperser Tank, which contained hazardous wastes restricted from land disposal, with the required information, nor was this information maintained in the Facility's operating record.

(h) Pursuant to Permit Condition IV.D.2., the Permittee shall ensure that the structural integrity of tanks is maintained in accordance with Section 4.3.3. of the permit application. Furthermore, Section 4.3.6. of the permit application states that, to ensure there is no corrosion or erosion of steel tanks, an ultrasonic thickness meter (or a functionally equivalent device) will be utilized to check the thickness of the tank walls once per year. Pursuant to Permit Condition I.C.10.b., the Permittee shall maintain at the facility records of all monitoring information—including all calibration and maintenance records—for a period of

at least three years from the date of the measurement, report, or record.

GRR did not maintain or furnish for inspection documentation demonstrating that it had performed annual structural integrity tests on the Disperser Tank.

(i) Pursuant to ADEM Admin. Code r. 335-14-5-.02(7)(d)3., the owner or operator must maintain at the facility a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position at the facility related to hazardous waste management.

GRR did not maintain the required training documentation at the facility.

6. 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(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.

7. In arriving at the civil penalty assessed in this Order, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATIONS:** The Department noted fourteen violations of ADEM Admin. Code div. 335-14. 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 GRR, the Department noted that the violations listed above were easily

avoidable. The Department also noted that GRR is a hazardous waste storage and treatment facility where compliance with the preventative procedures and requirements of the hazardous waste regulations is critical to the protection of human health and the environment.

(c) ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that there was no significant economic benefit conferred upon GRR as a result of the violations referenced herein.

(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 alleged violations.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, GRR has a history of previous violations with respect to ADEM Admin. Code div. 335-14. GRR's historical noncompliance is not similar to the violations listed above.

(f) THE ABILITY TO PAY: The Department does not have any evidence indicating that GRR is unable 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 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 Department's Contentions).

8. The Department neither admits nor denies GRR'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 alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interest of the citizens of Alabama.

GRR'S CONTENTIONS

9. GRR neither agrees with nor admits 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. GRR further agrees to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein. Nothing in this Special Order should be construed or deemed as an admission of fact or law by GRR.

10. GRR contends:

(a) The daily inventory counts for the Compactor Storage Area for January 27 and 28, 2015 indicate the number of containers to be below the permitted storage capacity. Notwithstanding the previous statement, GRR asserts that, at no time, was there any risk to the environment in that the area's actual secondary containment capacity (12,000 gallons) exceeded 10% of the storage quantity alleged during the inspection (84,700 gallons x 10% = 8,470 gallons of required secondary containment).

(b) GRR conducted Subpart CC inspections of the storage tank and disperser mixing tank closure devices in December 2014. Items identified during the inspections were properly and immediately addressed.

(c) Although the records were not presented during the January 27 and 28, 2015 inspection, integrity testing had been performed on the mixing portion of the disperser unit in 2014 concurrently with the other storage tanks at the facility.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, GRR, 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 GRR agree to enter into this Special Order by Consent with the following terms and conditions:

A. GRR agrees to pay to the Department a civil penalty in the amount of \$9,350.00 in settlement of the violations alleged herein within forty-five days of the effective date of this Consent Order. 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. GRR agrees that all penalties due pursuant to this Consent Order 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 Consent Order shall reference GRR's name and address, and the ADEM Administrative Order number of this action.

C. GRR agrees that, independent of this Consent Order, GRR shall comply with all terms, conditions, and limitations of its Permit and the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. The Department and GRR (hereinafter 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.

E. 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 alleged violations cited herein.

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

G. For purposes of this Consent Order only, GRR 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 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; GRR agrees not to 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.

I. 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 GRR does hereby waive any hearing on the terms and conditions of this Consent Order.

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

K. 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.

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

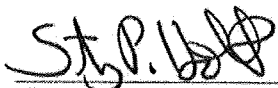
M. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

N. 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 GRR of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**GIANT RESOURCE RECOVERY-ATTALLA,
INC.**

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**



(Signature of Authorized Representative)

STEPHEN P. HOLT

(Printed Name)

DIRECTOR, ENV. AFFAIRS

(Printed Title)

11/30/2015

(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A

**Giant Resource Recovery-Attalla, Inc.
Attalla, Etowah County
EPA Identification Number ALD070513767**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Exceedance of the permitted storage capacity in the Compactor Storage Area	1	\$5,000	\$500	\$0	
Storage of hazardous wastes for greater than one year	1	\$5,000	\$500	\$0	
Failure to secure closure devices in the closed position	5	\$1,000	\$100	\$0	
Failure to maintain the Permitted Hazardous Waste Container Storage Area containment system	1	\$1,000	\$100	\$0	
Failure to repair cracks / gaps in the Tank Farm containment system	1	\$1,000	\$100	\$0	
Failure to label containers with accumulation start dates	2	\$200	\$20	\$0	
Failure to label the Disperser Tank	1	\$100	\$10	\$0	
Failure to document annual structural integrity tests	1	\$100	\$10	\$0	
Failure to document hazardous waste management training	1	\$100	\$10	\$0	Total of Three Factors
TOTAL PER FACTOR		\$13,500	\$1,350	\$0	\$14,850

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	(- \$5,500)
Total Adjustments (+/-)	(- \$5,500)

Economic Benefit (+)*	\$0
Amount of Initial Penalty	\$14,850
Total Adjustments (+/-)	(- \$5,500)
FINAL PENALTY	\$9,350

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.