

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

LG Electronics USA, Inc.
Huntsville, Madison County, Alabama
EPA Identification Number ALR000064238

Consent Order No. 21-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and LG Electronics USA, Inc. (“LG Electronics”) 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 (“AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. LG Electronics operates a solar panel manufacturing and assembly facility (the “Facility”) with EPA Identification Number ALR000064238, located at 201 James Record Road SW, in Huntsville, Madison County, Alabama. LG Electronics, as a result of its operations at the facility, was a large quantity generator, as that term is 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 AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On May 4, 2020, LG Electronics submitted a self-reporting notification of potential noncompliance to the Department. Based on a review of this submittal and a compliance evaluation inspection (CEI) conducted on May 26, 2020, the Department has made the following determination regarding LG Electronics' compliance status:

- (a) Pursuant to ADEM Admin. Code r. 335-14-3-.01(8)(d), a large quantity generator must submit a complete and correct ADEM Form 8700-12 (including all appropriate attachment pages and fees) reflecting current waste activities to the Department annually.

LG Electronics failed to submit a complete and correct ADEM Form 8700-12 to the Department. On February 1, 2019, the Department received a notification from LG Electronics indicating the facility was a small quantity generator of hazardous waste. Based on information received from LG Electronics, the Department has determined the facility was a large quantity generator of hazardous waste.

- (b) Pursuant to ADEM Admin. Code r. 335-14-3-.01(2), a person who generates a solid waste, as defined in 335-14-2-.01(2), must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable AHWMMMA regulations.

LG Electronics failed to make a proper waste determination on lead contaminated solar panel module manufacturing waste generated at the Huntsville facility. LG Electronics failed to properly characterize this waste and subsequently managed it as non-hazardous waste. In addition, LG Electronics failed to make a waste determination on waste rags generated during the solar panel manufacturing process.

- (c) Pursuant to ADEM Admin. Code r. 335-14-3-.02(1)(a)1., a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transportation a rejected hazardous waste load, must prepare a Manifest (OMB control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A.

On at least a monthly basis from February 2019 through December 2019, LG

Electronics failed to prepare a uniform hazardous waste manifest for each shipment of hazardous waste (i.e. lead contaminated solar panel module manufacturing waste) sent for disposal.

- (d) Pursuant to ADEM Admin. Code r. 335-14-3-.01(8)(c), a generator must not offer his hazardous waste to transporters that have not received an EPA identification number and an Alabama Hazardous Waste Transport Permit.

On at least a monthly basis from February 2019 through December 2019, LG Electronics offered its hazardous waste (i.e. lead contaminated solar panel module manufacturing waste) to a transporter that had not received an EPA identification number and an Alabama Hazardous Waste Transport Permit.

- (e) Pursuant to ADEM Admin. Code r. 335-14-3-.01(1)(a)3., a generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in 335-14- 1-.02, or not otherwise authorized to receive the generator's hazardous waste.

On at least a monthly basis from February 2019 through December 2019, LG Electronics sent hazardous waste (i.e. lead contaminated solar panel module manufacturing waste) for disposal to facilities that were not designated facilities or otherwise authorized to receive the waste.

5. On June 29, 2020, the Department issued a Notice of Violation to LG Electronics, which cited violations of the hazardous waste regulations based on the self-reporting notification and the May 26, 2020, CEI.

6. On August 7, 2020, the Department received LG Electronics' response to the aforementioned Notice of Violation.

7. 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 violation(s) 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 LG Electronics, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, LG Electronics has failed to exhibit a standard of care commensurate with the applicable regulatory standards.

(c) **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** LG Electronics avoided certain costs associated with the proper disposal of hazardous waste.

(d) **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Department is unaware of any efforts to minimize or mitigate effects on the environment by LG Electronics regarding the noted violations.

(e) **HISTORY OF PREVIOUS VIOLATIONS:** Based on a review of Department records, LG Electronics has no history of previous violations.

(f) **THE ABILITY TO PAY:** LG Electronics 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).

8. The Department neither admits nor denies LG Electronics' 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

9. LG Electronics neither admits nor denies the Department's contentions. Without admission of liability, LG Electronics consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein. In no event shall this Special Order by Consent be construed as an admission of liability by LG Electronics and in no event shall it be introduced as evidence in any proceeding for that purpose; provided, however, that solely for purposes of seeking to enforce or compel compliance with the terms and conditions of this Special Order by Consent, the Department may seek to introduce this Special Order by Consent as evidence in any such proceeding.

10. Upon learning of the potential non-compliance waste activities through its audit findings, LG Electronics responded to the issues identified by the Department in its June 29, 2020 Notice of Violation, implementing corrective measures. Once LG Electronics learned of these potential non-compliance waste activities through its audit findings, it performed waste characterization analysis of the solar panel module manufacturing waste materials, immediately ceased disposal of these materials, and engaged a recycling firm specializing in solar cell materials to assist with recycling the scrap solar panel module manufacturing materials. Once LG Electronics learned that the waste rags should have been characterized before disposal, it collected and submitted sampling for waste characterization analysis. Each and every violation alleged in Paragraphs 4(a) through (e) were either fully addressed or in the final stages of completion even before the June 29, 2020 Notice of Violation was issued by the Department, thus demonstrating LG Electronics' responsiveness.

11. LGE Electronics addressed the alleged deficiencies asserted by the Department and has implemented sound measures to prevent their recurrence. LG Electronics is committed to assuring compliance with local, State and federal regulations.

ORDER

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

A. LG Electronics agrees to pay to the Department a civil penalty in the amount of \$192,500 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. LG Electronics 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 LG Electronics' name and address, and the ADEM Administrative Order number of this action.

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

D. The Department and LG Electronics ("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. LG Electronics 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, LG Electronics 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; LG Electronics 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 LG Electronics 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 LG Electronics' 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 LG Electronics of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

LG ELECTRONICS USA, INC.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

	
(Signature of Authorized Representative)	Lance R. LeFleur
Myung Pyo Jeon	Director
(Printed Name)	
Solar Division Leader.	
(Printed Title)	
21/12/20	
(Date Signed)	(Date Executed)

Attachment A

LG Electronics USA, Inc.
Huntsville, Madison County
Facility ID No. ALR000064238

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Failure to submit a complete and correct notification of regulated waste activities to the Department	1	\$250	\$250	\$0	
Failure to make an adequate hazardous waste determination on all wastes generated at the facility	1	\$2,500	\$500	\$0	
Failure to prepare a hazardous waste manifest for each shipment of hazardous waste (i.e. lead contaminated solar panel module manufacturing waste) sent for disposal	11	\$11,000	\$5,500	\$0	
Offering hazardous waste to a transporter not permitted to transport hazardous waste	11	\$55,000	\$11,000	\$0	
Offering hazardous waste for disposal to a facility that was not a designated facility or otherwise authorized to receive the waste	11	\$110,000	\$11,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$178,750	\$28,250	\$0	\$207,000

Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	(-\$50,000)
Total Adjustments (+/-) Enter at Right	(-\$50,000)

Economic Benefit (+)	\$35,500
Amount of Initial Penalty	\$207,000
Total Adjustments (+/-)	(-\$50,000)
FINAL PENALTY	\$192,500

Footnotes

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