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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTH CENTRAL REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

Giant Resource Recovery – Arvonía, Inc.

VAD098443443

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455 between the Virginia Waste Management Board and Giant Resource Recovery – Arvonía, Inc. for the purpose of resolving certain alleged violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Facility" means the buildings and structures associated with hazardous waste permit - number VAD098443443, issued to GRR.

6. "Order" means this document, also known as a Consent Order.
7. "GRR" means Giant Resource Recovery – Arvonias, Inc. located at 11049 Bridgeport Road in Arvonias, VA, licensed to do business in Virginia. "GRR" may also refer to Giant Resource Recovery Aerosols Inc., which has its own tax ID number and is associated with the billing for the aerosol waste.
8. "Kruncher building" means the facility that contains the Kruncher room bulk storage area for the aerosols. This building is also called the "Container Management Facility."
9. "Kruncher room" means the area inside the Kruncher building that contains the two Kruncher aerosol can processing units.
10. "SCRO" means the South Central Regional Office of DEQ, located in Lynchburg, Virginia.
11. "Regulations" means the Virginia Hazardous Waste Management Regulations (VHWMR) at 9 VAC 20-60-12 *et seq.*, which incorporates text from Title 40 of the Code of Federal Regulations (CFR).
12. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*
13. "NOV" means Notice of Violation.
14. "VDLI" means the Virginia Department of Labor and Industry – occupational safety and health, an agency of the Commonwealth of Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. GRR is located at 11049 Bridgeport Road, Arvonias, VA, ("Facility"). GRR is a Treatment, Storage, and Disposal Facility (TSDF) that receives hazardous waste from off-site and stores and blends it for use as hazardous waste fuel by the adjacent Solite, LLC facility and other facilities.
2. On February 8, 2007, an explosion and fire occurred in the Kruncher room of the Kruncher building at the Facility. One employee received burns requiring medical treatment. Other employees were also in the building and escaped without injury. Preventative measures were implemented to help avoid environmental impact as a result of the fire. Specifically, earthen dams were constructed to contain the fire suppression water that was flowing out of the Kruncher building in order to prevent it from entering the James River. An ambient air quality sample was collected by DEQ in response to a citizen complaint regarding the smoke from the fire. Laboratory results indicated only background levels of air pollutants in the area beyond the immediate fire.

3. On March 8, 2007, DEQ staff conducted a compliance inspection of the Facility and also reviewed documents provided during the course of the inspection. On April 11th and April 18th DEQ staff conducted focused compliance inspections to view a video of the incident and to verify information. Based on observations made and documentation reviewed during the inspections of the Facility, DEQ issued NOV 07-05-SCRO-001 to GRR on July 9, 2007, for alleged violations of the Regulations and GRR's permit VAD098443443 ("Permit"). The NOV cited six (6) alleged violations observed during the March 8, 2007, April 11, 2007, and April 18, 2007 inspections.
4. GRR representatives met with DEQ staff on August 13, 2007, to discuss the alleged violations listed in the NOV. GRR representative's comments, concerns, and new information were taken under consideration. The DEQ determined that of the six (6) alleged violations listed in the original NOV, observations #1 and #2 could be consolidated as well as observations #3 and #4. Observations #5 and #6 remain as stand alone issues.
5. Consolidation of NOV observations #1 and #2 identify that the reservoir lid on Kruncher #2 was left open while the unit was processing aerosol cans. The operation of the Kruncher unit in this manner did not ensure separation of the flammable liquid and gas wastes from potential ignition sources and did not prevent the emission of volatile organic compounds (VOCs) to the atmosphere.
6. The miscellaneous treatment unit (the Kruncher unit) was not operated according to the procedures in the approved Permit.
7. Pursuant to Permit Condition II.G.1., Design and Operation of Facility, the Permittee shall maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, groundwater, or surface water which could threaten human health or the environment. The Regulations and Permit requirements, which incorporate the requirements of 40 CFR § 264.17, are further specified under Attachment DD, Security Provisions Procedures, and Equipment to Prevent Hazards.
8. Pursuant to Permit Condition II.L.1 [Air Emission Standards for Process Vents, Equipment Leaks, Tanks, Surface Impoundments, and Containers], the Permittee shall comply with air emission standards pursuant to 40 CFR § 264, Subpart AA, Air Emission Standards for Process Vents, Subpart BB, Air Emission Standards for Equipment Leaks, and Subpart CC, Air Emission Standards for Tanks, Surface Impoundments, and Containers, to the extent applicable.
9. Consolidation of NOV observations #3 and #4 allege that GRR failed to use an appropriate industrial truck. GRR operated Komatsu Model FG25T-14, serial number 00589107 industrial truck inside the Kruncher room, which DEQ alleges is a Class 1, Division 1, Group D area, to load aerosol containers into the Kruncher units. GRR disputes this allegation. This industrial truck is a Gasoline/LP-gas-powered truck with an NFPA type designation of G/LP. A G/LP unit is defined as one that operates on either gasoline or liquefied petroleum gas having minimum acceptable safeguards against

inherent fire hazards. In addition, DEQ alleges that GRR did not obtain authorization from an appropriate authority (including, but not limited to DEQ or VDLI), having jurisdiction regarding the use of an LPS industrial truck.. GRR disputes this allegation. The Tusk model 350 PGLH-17, serial number 673109A is a Gasoline/Liquid Propane gas powered truck with an NFPA type designation of GS/LP and was being used by GRR in the storage area of the Kruncher building, excluding the Kruncher room, a Class 1, Division 2, Group D location.

10. According to section 4.2.3.2 of NFPA 505, in locations used for the storage of flammable liquids in sealed containers or liquefied or compressed flammable gases in containers, approved power-operated industrial trucks designated as Types CNS, DS, ES, GS, LPS, GS/CNS, and GS/LPS shall be permitted to be used where approved by the authority having jurisdiction.
11. The Permit issued to GRR dictates operating procedures for the Facility. DEQ alleges that the use of an LPS fork truck would require approval by DEQ. Otherwise, DEQ could accept VDLI authority in the event that GRR had obtained operational change approval from VDLI prior to GRR use of an LPS unit. GRR disputes this allegation, and contends that NFPA 505 allowed GRR to use an LPS fork truck without obtaining the approval of DEQ or VDLI. GRR did not seek advice from DEQ on this matter prior to making the self determination of assuming the role of “the authority having jurisdiction.”
12. According to NFPA 505, only DX and EX rated industrial trucks are allowed for operation in a Class 1, Division 1, Group D area.
13. The Facility is permitted to operate the Container Management Facility with an industrial truck in accordance with NFPA 30, 30B, and by reference, the 505 Standards.
14. According to section 6.2.1 of NFPA 30B, “Code for the Manufacture and Storage of Aerosol Products,” 1998, the use and selection of powered industrial trucks shall comply with NFPA 505, *Fire Safety Standard for Powered Industrial Trucks, including Type Designations, Areas of Use, Conversions, Maintenance, and Operation*.
15. According to section 4.2.2.1 [Class 1, Division 1, Group D] of NFPA 505, 2002 Edition, approved power-operated industrial trucks designed as Type DX or Type EX and classified for Class 1, Group D chemicals shall be permitted to be used in locations that contain gases or vapors.
16. According to section 4.2.2.2 of NFPA 505, Class 1, Division 1, Group D areas shall include the following: Locations where volatile flammable liquids or liquefied flammable gases are transferred from one container to another, and all other locations where hazardous concentrations of flammable vapors or gases are likely to occur in the course of normal operations.
17. According to the Permit, plans and specifications in Drawing No. 13-3 specifies: 1) “All mechanical equipment located in the Kruncher Room is to be Class 1, Division 1 rated including all electrical, ” 2) “The electrical equipment and wiring shall be suitable for Class 1, Division 1 locations as defined in Table 2-5.7.3 of NFPA 30, Flammable and

Combustible Liquids Code (1996).” The Permit’s Attachment HH, Plans and Specifications, Section HH.2, page 9 of 47 specifies: “All mechanical equipment is Class 1, Division 1 rated, including all electrical.”

18. According to NFPA 505 *Fire Safety Standard for Powered Industrial Trucks, 2002 Edition*, an industrial truck with the type designation of GS/LPS is a Gasoline/LP-gas-powered unit that, in addition to meeting the requirements for Type G/LP units, is provided with additional safeguards to the exhaust, fuel, and electric systems.
19. Pursuant to Permit Condition III.C.4., the Permittee shall comply with the requirements for storage of flammable and combustible liquids and gases as found in the National Fire Protection Associations (NFPA) “Flammable and Combustible Liquids Code”, NFPA 30, 1993, as amended, and the NFPA 30B, “Code for the Manufacture and Storage of Aerosol Products,” 1998.
20. According to section 4.2.3.2 of NFPA 505, in locations used for the storage of flammable liquids in sealed containers or liquefied or compressed flammable gases in containers, approved power-operated industrial trucks designated as Types CNS, DS, ES, GS, LPS, GS/CNS, and GS/LPS shall be permitted to be used where approved by the authority having jurisdiction.
21. GRR failed to perform the required leak detection and monitoring inspections for the pumps in light liquid service for the month of January 2007.
22. Pursuant to Permit condition Attachment CC, Inspection and Monitoring, Appendix CC-3-V.A., all pumps in light liquid service are to be monitored monthly to detect leaks using the organic vapor analyzer (OVA) and/or photo ionization detector (PID) in accordance with the procedures at 9 VAC 20-60-264.1063(b). GRR contends that the pumps operated at the facility are equipped with dual mechanical seals meeting the requirements of 9-VAC-20-60-264.1052(d) and therefore, failure to perform the monthly monitoring is not a violation of the RCRA Subpart BB regulations. GRR also contends that its Leak Detection and Monitoring Plan included in Attachment CC, Appendix CC-3 simply failed to include all compliance options allowable by regulations. The Department recognizes that GRR’s facility permit did not include a compliance monitoring plan to reduce the monitoring frequency associated with dual mechanical seals.
23. Installation of UV / IR sensors for the Fenwal Fire Suppression System was reportedly completed on June 16, 2006. A Class 1 permit modification for this new system was not submitted by GRR prior or subsequent to this installation. GRR contends that the new system was an upgraded version of the previous system. The Department recognizes this “upgrade” not merely as a replacement of functionally equivalent equipment, but also as a change in Kruncher unit / Kruncher room standard operating procedures.
24. Pursuant to 9 VAC 20-60-270.42 and Permit condition I.B.2., permit modifications at the request of the Permittee shall be done as specified by Regulations, 40 CFR 270.42. According to 40 CFR 270.42(d) [Other Modifications], in the case of modifications not explicitly listed in appendix I of this section, the permittee may submit a Class 3 modification request to the Agency, or he or she may request a determination by the

Director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, he or she must provide the Agency with the necessary information to support the requested classification.

25. 40 CFR 270.42(d)(2)(i) states that Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval.
26. GRR has stated its intention to discontinue Kruncher operation and material recovery from pressurized containers at the Facility. GRR submitted an application for a hazardous waste permit modification consistent with these intentions. GRR is in the process of implementing closure of the Kruncher building under applicable permit and regulatory requirements.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code § 10.1-1455 and upon consideration of Va. Code § 10.1-1186.2, the Board orders GRR, and GRR agrees, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders GRR, and GRR voluntarily agrees, to a civil charge of \$89,760 in settlement of the violations cited in this Order, to be paid as follows:

1. GRR shall pay \$22,440 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The payment shall include GRR's Federal ID number and shall identify that payment is being made as a result of this Order.

2. GRR shall satisfy \$67,320 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.
3. The net project cost of the SEP to GRR shall not be less than the amount set forth in Paragraph D.2. If it is, GRR shall pay the remaining amount in accordance with Paragraph D. 1 of this Order, unless otherwise agreed to by the Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which

the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

4. By signing this Order, GRR certifies that it has not commenced performance of the SEP.
5. GRR acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by GRR to a third party, shall not relieve GRR of its responsibility to complete the SEP as described in this Order.
6. In the event it publicizes the SEP or the SEP results, GRR shall state in a prominent manner that the project is part of a settlement of an enforcement action.
7. The Department has the sole discretion to:
 - a. Authorize any alternate, equivalent SEP proposed by GRR; and
 - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that GRR has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify GRR in writing. Within 30 days of being notified, GRR shall pay the amount specified in Paragraph D.2., above, as provided in Paragraph D.1., above.
9. GRR shall comply with the terms and conditions of its permit and applicable regulatory requirements, including but not limited to those requirements in the Notice of Violation. In particular, GRR shall maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, groundwater or surface water which could threaten human health or the environment.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of GRR, for good cause shown by GRR, or on its own motion after notice and opportunity to be heard. This Order only addresses and resolves those alleged violations specifically identified herein. This Order addresses the environmental violations of which the Department is aware concerning the events of February 8, 2007.
2. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations;

- (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not affect appropriate enforcement actions by other federal, state, or local regulatory authorities whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order only, GRR agrees not to contest the jurisdictional allegations, factual findings, and conclusions of law contained herein. GRR specifically disagrees with the allegations concerning the industrial truck in paragraphs C.9 – C.20.
 4. GRR consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
 5. GRR declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the Waste Management Act, Code § 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
 6. Failure by GRR to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
 7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
 8. GRR shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other similar occurrence. GRR shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. GRR shall notify the SCRO Regional Director verbally and in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such written notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented.

Failure to notify the SCRO Regional Director verbally within one business day and in writing within five business days of learning of any condition above, which GRR intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. Any plans, reports, schedules, or specifications attached hereto, or submitted by or on behalf of GRR, and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
10. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
11. This Order shall become effective upon execution by the Director, or his designee, and GRR. Notwithstanding the foregoing, GRR agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Board, the Director, or his designee, terminates the Order in its or his sole discretion upon 30 days written notice to GRR. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve GRR from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. By its signature of an authorized official below, GRR voluntarily consents to the issuance of this Order.
14. The undersigned representative of GRR certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind GRR to this Order. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of GRR.

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And it is so ORDERED this 30th day of SEPTEMBER, 2008.

Steven A. Dietrich

Steven A. Dietrich, P.E.
Regional Director
South Central Regional Office
Department of Environmental Quality

Giant Resource Recovery – Arvonias, Inc. consents to the issuance of this Order.

By: [Signature]
Title: VP & General Counsel
Date: July 15, 2008

State of South Carolina
~~Commonwealth of Virginia~~
City/County of Charleston

The foregoing document was signed and acknowledged before me this 15th day of July, 2008, by Jeremiah J. Jewett, III, who is the VP & General Counsel of Giant Resource Recovery – Arvonias, Inc, Arvonias, Virginia.
title



[Signature]
Notary Public

My commission expires: 11/13/2014

APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT GIANT RESOURCE RECOVERY- ARVONIA INC, ARVONIA VIRGINIA

The Supplemental Environmental Project to be performed by GRR shall consist of financial support, as specified in Section D of this Order, for the local fire department to help enable the organization to fulfill their obligations under federal law to collect information and assess the dangers of hazardous chemicals at facilities within their jurisdiction, to train emergency response personnel and to better respond to chemical spills.

This SEP for support of emergency planning and preparedness should be identified in an approved emergency response plan as an additional unfunded resource necessary to implement or exercise the emergency plan in accordance with Section 303 of the federal Emergency Planning and Community Right-to-Know Act (EPCRA).

Acceptable project funding includes:

- Funding the purchase of equipment needed for mass casualty trailers as identified in an approved emergency response plan.
- Funding expenses associated with training for hazardous materials personnel (i.e. tuition, lodging, travel) as identified in an approved emergency response plan.
- Funding the purchase of computers and software, communication systems, chemical detection and inactivation equipment, or other hazardous materials equipment as identified in an approved emergency response plan.

Whenever publicizing this SEP or the results of the SEP, GRR will state, in a prominent manner, that the project is being undertaken as part of the settlement of an enforcement action with the Virginia Waste Management Board under the direction of the Department of Environmental Quality.

Within 60-days of the effective date of this Order, GRR shall provide the DEQ – South Central Regional Office a detail description of project funding for the supplemental environmental project (SEP) financial support, as outlined in Section D of this Order, for the local fire department.

Within 90-days of the effective date of this Order, GRR shall complete the SEP and provide written notification and documentation to the DEQ – South Central Regional Office.