



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
AERC.Com INC.
FOR
AERC RECYCLING SOLUTIONS
EPA ID No. VAR000528539**

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 AERC.Com Inc., regarding the AERC Recycling Solutions Facility in Hayes, Virginia, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

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

1. "AERC" means AERC.Com Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. AERC is a "person" within the meaning of Va. Code § 10.1-1400.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
3. "CEI" means compliance evaluation inspection.

4. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-80-120(A).
5. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "EPA" means Environmental Protection Agency.
9. "Facility" or "Site" means the AERC Facility located at 3301 Rosedale Avenue, Richmond, Virginia.
10. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
11. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
12. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
16. "RCRA" means Resource Conservation and Recovery Act.
17. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.

18. "SAA" means satellite accumulation area.
19. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
20. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).
21. "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 40 CFR § 273: Batteries as described in §273.2; Pesticides as described in §273.3; Mercury-containing equipment as described in §273.4 and Lamps as described in §273.5.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. AERC owns and operates the Facility. AERC is a national waste management company offering collection, transport, and recycling of electronic (e-waste), universal, and hazardous waste. AERC operates 10-day hazardous waste transfer stations (TF), universal waste destination (reclamation), and hazardous waste permitted facilities across the U.S. The company also provides waste brokerage for electronic waste including computers, cathode ray tubes, ballasts, appliances, and other components. At the Facility, AERC operates as a TF and universal waste large quantity handler for batteries, lamps, and mercury containing equipment. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. AERC submitted a RCRA Subtitle C Site Identification Form received June 13, 2014, which gave notice of regulated waste activity at the Facility as an SQG of hazardous waste. AERC was issued EPA ID No. VAR000528539 for the Facility. AERC is also a hazardous waste transporter and a LQG of universal waste.
3. AERC uses box route trucks to collect e-waste, and universal waste as well as spent lead-acid batteries from regional client locations. AERC generates one hazardous waste stream at the Facility, consisting of floor sweeping of dust and broken lamps. AERC characterizes this waste using processing knowledge as characteristically hazardous

waste due to mercury, hazardous waste code D009. AERC staff accumulates floor sweeping waste in a 55-gallon steel container (drum), managed as a satellite accumulation area container. AERC accumulates a full container every two to three months. Floor sweeping waste is shipped off-site (self-transported) by AERC to their permitted hazardous waste facility located in Allentown, Pennsylvania.

4. Universal waste lamps are received either crushed or intact. Crushed lamps received from customers located in South Carolina, North Carolina, West Virginia, or the District of Columbia (DC), are managed as hazardous waste since these states regulate crushed lamps as hazardous waste. Crushed lamps managed as hazardous waste are documented on hazardous waste manifests and stored at the Facility in the 10-day storage area. Incoming crushed lamp waste collected from customers located in Virginia and Maryland is managed as universal waste by AERC since these states regulate crushed lamps as universal waste. Crushed lamp waste managed as universal waste is stored in the universal waste area of the main warehouse.
5. On July 21st and 23rd, 2015, Department staff conducted a CEI at the Facility to evaluate AERC's compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations which are followed by legal citations:

Observation 1: There were seven unlabeled 55-gallon steel containers in the 10-day hazardous waste accumulation area. AERC staff stated the 55 gallon containers contained crushed fluorescent lights that were generated by GreenTech Solutions Inc. located in North Carolina, where crushed fluorescent lights are regulated as hazardous waste. The drums came in from North Carolina improperly with only a bill of lading so AERC staff had created identification labels for these containers which included the words "hazardous waste" and the date the container had been received at the Facility, which was June 26, 2015.

40 CFR§ 263.12 A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of §262.30 at a transfer facility for a period of ten days or less is not subject to regulation under parts 270, 264, 265, 267, and 268 of this chapter with respect to the storage of those wastes.

40 CFR 264.1(g) states: The requirements of this part do not apply to ... (9) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR 262.30 at a transfer facility for a period of ten days or less.

9VAC20-60-460 states: The Transporter shall not accept any hazardous waste for shipment unless the generator has met all the applicable labeling, container and packaging requirements of this chapter.

Observation 2: DEQ staff observed numerous containers of universal waste lamps that were open and/or did not appear structurally sound. The containers were taped around the

edges, appeared torn with holes, damaged by liquid, and arranged in such a manner (pallets of containers stacked on top of one another and leaning and containers stacked on open containers) that did not appear adequate to prevent breakage. DEQ staff noted that numerous containers of universal waste lamps were not labeled with the words “universal waste lamps; waste lamps; or used lamps.”

40 CFR §273.33(d) states ...Lamps. A large quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: (1) A large quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. AND

40 CFR 273.34(e) states: Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with any one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)”.

6. On October 27, 2015, the Department issued NOV number 2015-10-PRO-604 citing them for the violations observed during the July 21st and 23rd 2015 CEI.
7. On November 24, 2015, AERC submitted to the Department a letter response to the NOV. AERC stated they received the 7 drums from Greentech Solutions on June 25, 2015. Greentech shipped the material in question to AERC on a Bill of Lading not a Hazardous Waste Manifest. Greentech listed the contents of the drums as "used spent lamps for recycling" Universal Waste. Upon receiving the material and after completing AERC's quality control process, AERC determined the material received did not match the receiving paperwork. Facility personnel noted the discrepancy on the receiving documents and per AERC policy filled out a Discrepancy, promptly quarantined the material in question, and contacted the customer. The material remained in quarantine until corrected paperwork (Hazardous Waste Manifest) was received from Greentech Solutions. AERC stated they did not believe that 9 VAC20-60-264 the storage of shipments of hazardous waste for a period of 10 days would apply at the time of the inspection as the material was not received as hazardous waste.
8. In the November 24, 2015, letter, AERC explained that it frequently receives material not properly packaged or labeled. In response AERC has instructed their drivers, through additional training, how to advise customers of proper packing and instructed the drivers not to pick up material that is not packaged in accordance with AERC procedure OP-012 Safe Handling of Universal Waste, which addresses both packaging and labeling requirements of 40 CFR 273. In order to address packaging/labeling issues that are found at the time of receipt, when AERC receives material, it will undergo an initial Quality Control process to ensure material received matches the receiving paperwork. During this process if material is found to be improperly packaged, AERC will create a re-packaging quarantine area where the discrepancy can be addressed with the customer and the

material will be re-packaged to meet the standards of AERC's policy OP-012 Safe Handling of Universal Waste and 40 CFR 273.

9. On November 30, 2015, a meeting was held to discuss the NOV and related compliance issues at the Facility.
10. Based on the results of July 21st and 23rd, 2015, the November 24, 2015 letter response to the NOV, and November 30, 2015 meeting, the Board concludes that AERC has violated 40 CFR§ 263.12, 40 CFR 264.1(g), 9VAC 20-60-480, 40 CFR 273.33(d), and 40 CFR 273.34(e) as described above.
11. AERC has submitted documentation that verifies that the violations described in paragraph C5, above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders AERC, and AERC agrees to pay a civil charge of \$6,600 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

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

AERC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, AERC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of AERC for good cause shown by AERC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, AERC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein
4. AERC 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. AERC declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it 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 modify, rewrite, amend, or enforce this Order.
6. Failure by AERC 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. AERC 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 such other occurrence. AERC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AERC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days 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 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 and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the AERC 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. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and AERC.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after AERC has completed all of the requirements of the Order;
 - b. AERC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to AERC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve AERC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by AERC 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.
13. The undersigned representative of AERC 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 AERC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of AERC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no

representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, AERC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1 day of September, 2017.



Jefferson D. Reynolds
Enforcement Division Director
Department of Environmental Quality

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AERC.Com Inc. voluntarily agrees to the issuance of this Order.

Date: 7/24/17 By: [Signature], Director of Sustainability
(Person) (Title)
AERC.Com Inc.

state of Missouri
Commonwealth of Virginia
City/County of Jackson

The foregoing document was signed and acknowledged before me this 24 day of July, 2017, by Stephen Lefa who is Director of Sustainability of AERC.Com Inc., on behalf of the corporation.

[Signature]
Notary Public
14627223
Registration No.

My commission expires: 6/15/2018

Notary seal:

