

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

June 9, 2011

CERTIFIED MAIL NO. 91 7108 2133 3935 0365 2764
RETURN RECEIPT REQUESTED

Mr. Wayne Ellis
Greenway Recycling Solutions
545 Zierdt Road
Triana, Alabama 35401

Dear Mr. Ellis:

RE: Order No. 11-094-SW

Please find enclosed ADEM Order No. 11-094-SW which requires you to take certain actions in regard to alleged violations of the Solid Wastes and Recyclable Materials Management Act. This Order underwent a 30 day public notice and no comments were received by the Department. Please note that the assessed civil penalty is due within 45 days, and an abatement plan is due within 30 days of the issuance date of the Order.

If you have any questions concerning this matter, please contact Paul Searcy at (334) 271-7819 in Montgomery.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Gerald Hardy", is written over a horizontal line.

Wm. Gerald Hardy, Chief
Land Division



Enclosure

WGH/pes

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603 1333
(256) 353-1713
(256) 340-9359 (FAX)

Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	Order No. 11 -094 -SW
)	
Greenway Recycling Solutions)	
545 Zierdt Road)	
Triana, Alabama 35401)	
Madison County)	
)	

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2010 Cum Supp.), and the ADEM Administrative Code promulgated hereunder, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following finding of facts:

1. Greenway Recycling Solutions (hereinafter “Greenway” or “facility”) located at 545 Zierdt Road, Triana, Madison County, Alabama is the operator of an unauthorized dump which is the subject of this Order.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.) and Ala. Code § 22-27-9(a) (2006 Rplc. Vol. and 2010 Cum Supp.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable

Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2010 Cum. Supp.).

4. Ala. Code §22-27-2(36) (2006 Rplc. Vol. and 2010 Cum. Supp.) defines an “unauthorized dump” as “any collection of solid wastes either dumped or caused to be dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department.”

5. Ala. Code § 22-27-4(b) (2006 Rplc. Vol. and 2010 Cum. Supp.) states the following: “The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined...”

6. Ala. Code § 22-27-10(b) (2006 Rplc. Vol. and 2010 Cum. Supp.) states the following: “The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article.”

7. ADEM Admin. Code r. 335-13-1-.13 (1) (a) prohibits open or unauthorized dumps.

8. On June 24, 2009, Department personnel conducted an inspection and documented the existence of an unauthorized dump (hereinafter “UAD”) located at 545 Zierdt Road, Triana, Madison County, Alabama operated by Greenway. The UAD consisted of construction/demolition waste.

9. On September 15, 2009, Department personnel conducted an inspection and documented the existence of an unauthorized dump operated by Greenway.

10. On January 14, 2010, Department personnel conducted an inspection and documented the existence of an unauthorized dump.

11. On January 20, 2010, the Department issued a Notice of Violation (hereinafter "NOV") to Greenway for operating an UAD.

12. On March 12, 2010, the Department received a response to the January 20, 2010, NOV.

13. On April 6, 2010, Department personnel conducted an inspection of the facility and documented no substantive change in the operation since the January 14, 2010, inspection.

14. On April 13, 2010, the Department issued a letter to Greenway requiring the submittal of a response outlining the measures that would be employed to significantly reduce the amount of material at the facility.

15. The Department did not receive a response to the April 13, 2010, letter.

16. On January 19, 2011, Department personnel conducted an inspection and documented the continued existence of an UAD located at 545 Zierdt Road, Triana, Madison County, Alabama operated by Greenway.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, 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 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 be less than \$100.00 or 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 VIOLATION: Greenway has not complied with the requirements applicable to solid waste disposal since at least June 24, 2009. The Department is unaware of any irreparable harm to the environment, any immediate threat to human health, or the safety of the public as a result of these violations.

B. THE STANDARD OF CARE: Greenway has failed to abide by applicable solid waste requirements. Greenway has continued to operate an unauthorized dump by accumulating waste on a commercial scale at this location even after receiving notice from the Department that they were violating solid waste requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to determine if Greenway has realized a significant economic benefit as a result of the listed violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any attempts by Greenway to mitigate any potential effects upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has determined that Greenway has operated an unauthorized dump since at least June 24, 2009. The Department has documented the continued existence and operation of an

unauthorized dump at this location by Greenway during four follow-up inspections following the June 24, 2009, inspection.

F. THE ABILITY TO PAY: Greenway has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$62,500.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UAD, as follows (see attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Solid Waste Dump	\$100 - \$25,000 per day

ORDER

Based on the foregoing findings of fact and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7, and 22-27-11 it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, Greenway shall pay to the Department a civil penalty in the amount of \$62,500.00 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel

Alabama Department of Environmental Management

P O Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference Greenway's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Greenway shall cease and desist from operating an UAD at any location.

C. That, Greenway shall submit an abatement plan, in accordance with ADEM Admin. Code div. 13 regulations, to the Department for review and approval within 30 days of the execution date of this Order. Greenway shall document abatement activities by submitting monthly reports to the Department for review. The monthly reports shall include at a minimum the following and shall be submitted to the Department no later than the 15th day of the month following the end of the preceding month:

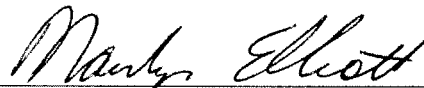
1. Total volume of waste removed from the property during the preceding month.
2. Name of the solid waste disposal facility where solid waste was disposed.
3. A copy of waste receipts documenting that all regulated solid waste was disposed of in a permitted landfill.
4. Photographs of the site documenting abatement activities for the reporting period.

D. That, should any provision of this 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.

E. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Greenway for the violations cited herein.

F. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Greenway for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 9th day of June, 2011.



Lance R. LeFleur
Director

ATTACHMENT A

Penalty Calculation Worksheet

Greenway Recycling Solutions
545 Zierdt Road
Triana, AL 35401

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Operation of an unauthorized dump since June 24, 2009 through January 31, 2011.	5	\$25,000		\$37,500
Totals:	5	\$25,000	\$0	\$37,500

Economic Benefit*:	\$0
Mitigating Factors:	\$0
Ability to Pay*:	\$0
Other Factors:	\$0

Total Civil Penalty: \$62,500

Footnotes

* See the "Findings" of the Order for a detailed description of each violation and the penalty factors

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Wm. Gerald Hardy, hereby certify that I have this date served the foregoing Administrative Order upon the person listed below by regular United States Mail, properly addressed and postage prepaid to:

**Greenway Recycling Solutions
545 Zierdt Road
Triana, Alabama 35401**

Done this 9th day of June, 2011.



Wm. Gerald Hardy

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- **Processed through Sort Facility, June 14, 2011, 3:23 am, HUNTSVILLE, AL 35813**
- **Electronic Shipping Info Received, June 13, 2011**

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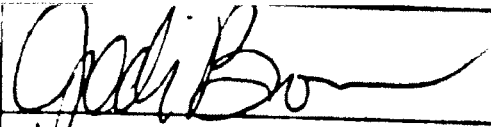


Date: 06/21/2011

Valerie Jackson:

The following is in response to your 06/21/2011 request for delivery information on your Certified Mail(TM) item number 7108 2133 3935 0365 2764. The delivery record shows that this item was delivered on 06/14/2011 at 02:43 PM in MADISON, AL 35756. The scanned image of the recipient information is provided below.

Signature of Recipient:

Signature	
Name	Jodi Brown

Address of Recipient:

Address	545 ZIEROT RD
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Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service