



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Division of Solid Waste Management
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 14th Floor
Nashville, Tennessee 37243

April 8, 2022

URS Agents, LLC - Registered Agent
Diversified Scientific Services, Inc.
992 Davidson Road, Suite B
Nashville, TN 37205-1051

CERTIFIED MAIL
7020 1810 0001 8307 3272
RETURN RECEIPT REQUESTED

RE: CASE NO. HWM21-0009

To Whom It Concerns:

Enclosed please find an Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Solid Waste Management to Diversified Scientific Services, Inc. Please read it carefully and pay special attention to the NOTICE OF RIGHTS section.

Regarding payment of any penalties or damages, please submit a copy of the payment to Christopher.Lagan@tn.gov by email or by mail to:

Chris Lagan
Division of Solid Waste Management
William R. Snodgrass Tennessee Tower
312 Rosa Parks Avenue, 14th floor
Nashville, TN 37243

If you or your attorney have any questions, please contact Mark Jordan by email at Mark.A.Jordan@tn.gov or by phone at 615-532-0675.

Sincerely,

Christopher Lagan

Christopher Lagan (Apr 7, 2022 14:27 CDT)

Chris Lagan,
Compliance and Enforcement Manager

cc: Alan Newman, EPA, Region 4, Atlanta GA
Lisa A. Hughey, CHMM, Director, DSWM
Craig Almanza, Deputy Director of Central Operations, DSWM
Rob Ashe, Deputy Director of Field Operations, DSWM
Rick Whitson, Environmental Fellow, DWSM
Beverly Philpot, Hazardous Waste Program Manager, DSWM
Revendra Awasthi, Knoxville Environmental Field Office Manager, DSWM
Michael Miracle, Records Liaison, DSWM

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF SOLID WASTE
)	MANAGEMENT
DIVERSIFIED SCIENTIFIC)	
SERVICES, INC.)	
)	
RESPONDENT)	CASE NO. HWM 21-0009
)	

DIRECTORS ORDER AND ASSESSMENT

NOW COMES Lisa A. Hughey, Director of the Tennessee Division of Solid Waste Management, and states:

PARTIES

I.

David Salyers, P.E., is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (Department) and is charged with the responsibility for administering and enforcing the Tennessee Hazardous Waste Management Act of 1977, Tennessee Code Annotated sections 68-212-101 through -121 (Act). Lisa A. Hughey is the duly appointed Director of the Division of Solid Waste Management (Division). She has received written delegation from the Commissioner to administer and enforce the Act.

II.

Diversified Scientific Services, Inc. (DSSI or Respondent) is a domestic corporation properly registered to conduct business in the State of Tennessee. Its agent for service of process is URS Agents, LLC, Suite B, 992 Davidson Road, Nashville, TN 37205-1051.

JURISDICTION

III.

When the Commissioner finds that provisions of the Acts are not being carried out, the Commissioner or his representative (Commissioner) is authorized to issue an order for correction to the responsible party. Tenn. Code Ann. §§ 68-212-111 and 68-211-112. Further, the Commissioner is authorized to assess damages and civil penalties against any person who violates any provision of the Acts or any rule, regulation, or standard adopted pursuant to the Acts. Tenn. Code Ann. §§ 68-212-114 and 68-211-112. Rules governing hazardous waste and used oil management have been promulgated. Tenn. Code Ann. § 68-212-107; Tenn. Comp. R. & Regs. 0400-12-01-.01 -.02 (Rules).

IV.

The Respondent is a “person” under the Act. Tenn. Code Ann. § 68-212-104(14).

V.

For the purpose of enforcing the Act or any rule or regulation authorized by the Act, or enforcing any requirement of an order issued by the Commissioner, the Commissioner is authorized to enter any place where wastes (which the Commissioner has reason to believe may be hazardous) are, may be, or may have been generated, stored, transported, treated, disposed of, or otherwise handled. Tenn. Code Ann. § 68-212-107. The Commissioner also has authority to inspect any samples of any waste, samples of any containers or labeling for such wastes, samples of ambient air, surface waters, and ground waters at the facility or site, as well as the authority to inspect and copy any records, reports, test results, or other information relating to the purposes of the Act.

FACTS

VI.

The Respondent is a subsidiary of Perma-Fix Environmental Services and is authorized to treat, store and dispose of low-level radioactive mixed hazardous wastes at its facility located at 657 Gallaher Road, Kingston, Tennessee (the 'facility'). The facility operates under TNHW-150 (Storage Permit) for the storage and treatment of mixed low-level radioactive hazardous wastes, and TNHW-102A (Combustion Permit) for the combusting of hazardous wastes for energy recovery. The facility is licensed by the Division of Radiological Health (DRH) to process low-level radioactive materials and low-level radioactive-process used oil (largely from nuclear power plants). The facility has authorization under the Toxic Substances Control Act (TSCA) to process, treat, and combust mixed polychlorinated biphenyl (PCB) waste. The facility operates as a permitted hazardous waste treatment, storage, and disposal facility, a large quantity generator of hazardous waste, a small quantity handler of universal waste, a used oil generator, a used oil processor and a mixed-waste incinerator. The facility has an Environmental Protection Agency installation identification number of TND 98-210-9142 and a Used Oil Processor identification number of UOP 73-103-7004. The facility has notified the Division of the generation of 15 hazardous waste streams.

VII.

The June 17, 2021, Compliance Evaluation Inspection

On June 17, 2021, Division personnel conducted a Compliance Evaluation Inspection (CEI), consisting of a facility walk-through of various waste receiving and storage areas; waste processing, treatment and stabilization areas; facility ventilation and filtration areas; the analytical laboratory; the tank farm; and the maintenance building, and a records review.

VIII.

During the walk-through of the Live Drum Room permitted storage area, the Division inspector observed approximately 100 containers of radioactive-contaminated lithium waste that had been stored for greater than one year, without documentation proving that storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

IX.

During the walk-through of the analytical laboratory, the Division inspector observed that two of ten pedal-operated satellite accumulation containers were not labeled to indicate the hazard of contents. Facility personnel labeled the containers during the CEI.

X.

During the walk-through of the Shift Supervisor's Office, the Division inspector observed that no apparent means had been used to track the accumulation start date of the universal waste batteries present in the universal waste battery container. On June 28, 2021, facility personnel submitted documentation of the proper labeling of the universal waste battery container with an accumulation start date.

XI.

On July 16, 2021, the Respondent submitted a letter detailing the basis for the extended accumulation time. The Division determined that this information did not provide adequate documentation proving that storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

XII.

On July 19, 2021, the Division issued a Notice of Violation (NOV) to the Respondent for the Rules violations found during the CEI. The NOV cited the following violations:

1. Failure to provide adequate documentation proving that storage of the radioactive-contaminated lithium wastes was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.
2. Failure to properly label two pedal-operated satellite accumulation containers to indicate the hazards of the contents.
3. Failure to provide a mechanism to track the accumulation start date of the universal waste batteries.

XIII.

The August 19, 2021, Follow Up Inspection

On August 19, 2021, Division personnel conducted a follow-up inspection of the facility. The Division inspector observed that 61 of the containers of radioactive-contaminated lithium waste had been shipped off site, partially correcting the violation. During the walk-through of the Inert Waste Storage Area (IWSA), the Division inspector observed that a row of drums had been moved to allow storage of an inter-modal shipping container, resulting in inadequate aisle space on either side of the container and in violation of Permit TNHW-150. The Respondent submitted documentation on August 23, 2021, showing the removal of the container which corrected the violation.

XIV.

On August 23 and September 9, 2021, the Respondent submitted documentation verifying the removal of all containers of radioactive- contaminated lithium wastes, correcting the outstanding violation from the June 17, 2021, CEI.

XV.

On September 10, 2021, the Division issued a second Notice of Violation (NOV) to the Respondent for the Permit violation found during the August 19, 2021, follow up inspection. The NOV cited the following Permit violation:

1. Failure to provide adequate aisle space in the ISWA.

The Division also acknowledged the correction of all violations observed during the June 17, 2021, CEI as well as the August 19, 2021 follow up inspection.

XVI.

On September 17, 2021, the Division sent a letter offering the Respondent the opportunity to schedule a Show Cause meeting to discuss the violations, the corrective actions taken, and any additional information and practices implemented to prevent a recurrence of the violations. The Show Cause Meeting was held virtually via Microsoft Teams on October 20, 2021. The Respondent presented additional information regarding the corrective measures taken to address the violations cited in the July 19 and September 10, 2021 NOVs. This information included an explanation of the delay in obtaining a modification to the facility's Title V Clean Air Act Permit that, in part, prevented the timely treatment of the radioactive-contaminated lithium wastes. The Respondent was therefore able to demonstrate that the corrective actions implemented would prevent a recurrence of these violations.

XVII.

During the course of the investigation, the Division incurred damages in the amount of \$900.00.

VIOLATIONS

XVIII.

By failing to provide adequate burden of proof for storing hazardous wastes for greater than one year, the Respondent violated Rule 0400-12-01-.10(4)(a)3.

Rule 0400-12-01-.10(4)(a)3 states:

(4) Prohibitions on Storage

(a) Prohibitions of Storage of Restricted Wastes

3. An owner/operator of a treatment, storage or disposal facility may store such 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.

XIX.

By failing to label satellite containers with an indication of the hazards of the contents, the Respondent violated Rule 0400-12-01-.03(1)(f)1.(v)(II).

Rule 0400-12-01-.03(1)(f)1(v)(II) states:

(1) General

(f) Satellite accumulation area regulations for small and large quantity generators

1. A generator may accumulate as much as 55 gallons of non-acute hazardous waste or either (i) one quart of liquid acute hazardous waste listed in subparagraph (4)(b) or part (4)(d)5 of Rule 0400-12-01-.02 or (ii) 1 kg (2.2 lbs.) of solid acute hazardous waste listed in subparagraph (4)(b) or part (4)(d)5 of Rule 0400-12-01-.02 in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of Rules 0400-12-01-.05 through 0400-12-01-.07 and 0400-12-01-.09, provided that all of the conditions for exemption in this subparagraph are met. A generator may comply with the conditions for exemption in this subparagraph instead of complying with the conditions for exemption in part (g)2 or (h)1 of this paragraph, except as required in subparts (vii) and (viii) of this part. The conditions for exemption for satellite accumulation are:

- (v) A generator must mark or label its container with the following:
 - (II) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

XX.

By failing to provide a means to track the accumulation start date for universal waste batteries, the Respondent violated Rule 0400-12-01-.12(2)(f)3.

Rule 0400-12-01-.12(2)(f)3. states:

(2) Standards for Small Quantity Handlers of Universal Waste

(f) Accumulation Time Limits

3. A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:
 - (i) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
 - (ii) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;
 - (iii) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

- (iv) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
- (v) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or
- (vi) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

XXI.

By failing to store, containerize, label, or to provide information in accordance with the rules, regulations, or orders of the Commissioner, the Respondent has violated Tenn. Code Ann. § 68-212-105(4).

Tenn. Code Ann. § 68-212-105(4) provides:

It is unlawful to:

- (4) Store, containerize, label, transport, treat or dispose of hazardous waste, or fail to provide information in violation of the rules, regulations, or orders of the Commissioner or Board, or in such a manner as to create a public nuisance or a hazard to the public health.

ORDER AND ASSESSMENT

XXII.

Pursuant to the authority vested by sections 68-212-111 and 68-212-117 of the Act, I, Lisa A. Hughey, hereby issue the following Order and Assessment to the Respondent:

1. The Respondent is hereby assessed damages in the amount of \$900.00 to be paid to the State on or before the 31st day after receipt of this Order.
2. The Respondent is hereby assessed a civil penalty in the amount of \$8,420.00 to be paid to the State on or before the 31st day after receipt of this Order.

3. Payment of the damages and civil penalty should reference Case No. **HWM 21-0009**, be made payable to “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services – Consolidated Fee Section, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243.

RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Director does not implicitly or expressly waive any provision of the Act or regulations promulgated thereunder or the authority to assess costs, civil penalties and/or damages incurred by the State against the Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

The Respondent(s) may appeal this Order and Assessment. Tenn. Code Ann. §§ 68-212-113 and -117. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent(s) received this Order and Assessment or this Order and Assessment will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-212-113; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act);

Tenn. Comp. R. & Regs. 1360-04-01 (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny the Order and Assessment. Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. The petition may be mailed or delivered to this address, or it may be sent to TDEC.Appeals@tn.gov. Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, Snodgrass Tennessee Tower, 312 Rosa Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Christopher Lagan, State of Tennessee, Division of Solid and Hazardous Waste Management,

William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 14th Floor, Nashville, TN 37243. Attorneys should contact the undersigned counsel of record. **The case number, HWM21-0009, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Solid Waste Management, Tennessee Department of Environment and Conservation, on this 8th day of April, 2022.



Lisa A. Hughey, CHMM
Director, Division of Solid Waste Management
TN Department of Environment and Conservation

Reviewed by:

Ellery R. Richardson

[Ellery R. Richardson \(Apr 7, 2022 15:21 CDT\)](#)

Ellery R. Richardson
BPR #032337
Associate General Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
PHONE: (615) 532-0128
EMAIL: Ellery.R.Richardson@tn.gov