



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

August 6, 2020

Mr. Ryan Stinnett – General Counsel
The University of Tennessee at Chattanooga.
719 Andy Holt Tower
Knoxville, TN 37996-0170

CERTIFIED MAIL
7019 1640 0001 2447 0426
RETURN RECEIPT REQUESTED

RE: CASE NO. HWM20-0006

Dear Mr. Stinnett:

Enclosed please find an Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Solid Waste Management to The University of Tennessee at Chattanooga. 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
Nashville, TN 37243

If you or your attorney have any questions, please contact Chris Lagan by email at Christopher.Lagan@tn.gov or by phone at (615) 532-0883.

Sincerely,

Chris Lagan

Chris Lagan (Aug 6, 2020 10:24 CDT)

Chris Lagan, Compliance and Enforcement Manager
Division of Solid Waste Management

cc: Harry McCann, DSWM/Chattanooga Environmental Field Office
William Krispin, DSWM/Central Office, Nashville
Lisa Hughey, DSWM/Central Office, Nashville
Rob Ashe, DSWM/Central Office, Nashville
Alan Newman, EPA Region 4, Atlanta, GA
Enforcement file

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

IN THE MATTER OF:)	DIVISION OF SOLID WASTE
)	MANAGEMENT
UNIVERSITY OF TENNESSEE)	
AT CHATTANOOGA)	
TND981475353)	
)	
RESPONDENT)	CASE NO. HWM 20-0006
)	

DIRECTORS ORDER AND ASSESSMENT

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

PARTIES

I.

Lisa A. Hughey is the duly appointed Director of the Division of Solid Waste Management (“Director” and “Division,” respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (“Department”). She has received written delegation from the Commissioner to administer and enforce the Tennessee Hazardous Waste Management Act and the Tennessee Used Oil Collection Act.

II.

The University of Tennessee at Chattanooga (the “Respondent”) is a public higher education institution and a regulated entity. Its agent for service of process is Ryan Stinnett, General Counsel, 719 Andy Holt Tower, Knoxville, TN 37996-0170.

JURISDICTION

III.

When the Commissioner finds that provisions of the Acts are not being carried out, the Commissioner or his representative (the "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 (the "Rules").

IV.

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

FACTS

V.

The Respondent is a part of the University of Tennessee education system. The Respondent generates hazardous waste in four separate buildings on campus: The Administrative Services Building, Holt Hall, Grote Hall, and Bretske Hall (collectively "the facility"). The point of contact for the facility is the Administration Services Building located at 615 McCallie Avenue, Chattanooga, Tennessee. The facility is a small quantity generator of hazardous waste and has an Environmental Protection Agency installation identification number of TND 98-147-5353. The facility reported the generation of 10 hazardous waste streams for the 2018 reporting year, primarily from academic laboratory operations.

VI.

The January 30, 2020 Compliance Evaluation Inspection

On January 30, 2020, Division personnel conducted a Compliance Evaluation Inspection (CEI) consisting of a facility walk-through and a records review.

VII.

The Division inspector observed that emergency contact information was not posted by the telephone and a spill kit was not present in the 180-day hazardous waste storage area in Room 108 of Holt Hall.

VIII.

The Division inspector observed the following on shelving with totes of hazardous waste containers in the 180-day hazardous waste storage area in Room 417 of Grote Hall:

- Aqueous Tote: Two 1-gallon containers of hazardous waste that were not marked with accumulation start dates.
- Solid Tote: Six 1-gallon containers of High Performance Liquid Chromatography waste that were not labeled with the words "Hazardous Waste" and were not marked with accumulation start dates.
- Flammable Tote: Three 1-gallon containers of various wastes that were not marked with accumulations start dates.

IX.

The Division inspector observed the following during the facility records review:

- Signed, return to generator copies of four hazardous waste manifests were missing.
- The facility hazardous waste reduction plan had not been updated.
- The weekly inspection log for the 180-day hazardous waste storage area in the Administrative Services Building showed 13 weekly inspections for 2019, no weekly inspections for 2018 and 12 weekly inspections for 2017.

- The weekly inspection log for the 180-day hazardous waste storage area in Grote Hall showed:
 - For 2019 - 12 instances of weekly inspections not conducted within seven days, no inspections for March and June, and five separate weeks of no inspections
 - For 2018 - missing records or no inspections for January, February and April through December, two separate weeks of no inspections, and 11 instances of weekly inspections exceeding seven days
 - For 2017 - nine instances of weekly inspections not conducted within seven days, three weeks of no inspections and missing the time of inspection from January through May 23rd
- No weekly inspections of the 180-day hazardous waste storage area in Holt Hall for the previous three years.

X.

On February 28, 2020, the Division issued a Notice of Violation (NOV) to the Respondent for the violations found during the CEI. The NOV cited the following violations:

1. Failure to label hazardous waste containers in the 180-day area of Grote Hall with the words "Hazardous Waste".
2. Failure to mark hazardous waste containers in the 180-day area of Grote Hall with accumulation start dates.
3. Failure to provide spill kits in Room 108 of Holt Hall.
4. Failure to post emergency contact information by the telephone in Room 108 of Holt Hall and failure to post emergency equipment information in the 180-day area of the Administrative Services Building.
5. Failure to maintain copies of hazardous waste manifests.
6. Failure to conduct weekly inspections of the 180-day hazardous waste storage areas.
7. Failure to maintain complete weekly inspection records.
8. Failure to update the facility's hazardous waste reduction plan.

XI.

In a series of email communications between January 31, 2020 and February 11, 2020, the Respondent submitted documentation of the correction of all violations, with the exceptions of violations 6 and 7. These violations are uncorrectable.

XII.

On March 13, 2020, 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 on May 7, 2020. Although the Respondent presented additional information detailing the causes of the violations, no information was presented that would preclude future violations.

XIII.

During the course of investigation, the Division incurred damages in the amount of \$3,843.75.

VIOLATIONS

XIV.

By failing to label containers of hazardous waste, the Respondent violated Rule 0400-12-01-.03(4)(e)6(v).

Rule 0400-12-01-.03(4)(e)6(v) states:

(4) Pre-transport Requirements

(e) Accumulation Time

6. A small quantity generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

- (v) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste";

XV.

By failing to mark containers of hazardous waste with accumulation start dates, the Respondent violated Rule 0400-12-01-.03(4)(e)6(iv)(I).

Rule 0400-12-01-.03(4)(e)6(iv)(I) states:

(4) Pre-transport Requirements

(e) Accumulation Time

- 6. A small quantity generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

- (iv) (I) Where containers are used, the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

XVI.

By failing to have spill control equipment in the hazardous waste storage area, the Respondent violated Rule 0400-12-01-.03(4)(e)6(vi) which incorporates Rule 0400-12-01-.05(3)(c)3.

Rule 0400-12-01-.03(4)(e)6(vi) states:

(4) Pre-transport Requirements

(e) Accumulation Time

- 6. A small quantity generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

- (vi) The generator complies with the requirements for owners or operators in parts (2)(f)1, 3, and 4, and paragraph (3) of Rule 0400-12-01-.05, and with all applicable requirements under Rule 0400-12-01-.10;

Rule 0400-12-01-.05(3)(c)3 states:

(3) Preparedness and Prevention

(c) Required Equipment

All facilities must be equipped with the following, unless none of the hazard posed by waste handled at the facility could require a particular kind of equipment specified below:

3. Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

XVII.

By failing to post emergency contact information and emergency equipment information by the telephone in the hazardous waste storage area, the Respondent violated Rule 0400-12-01-.03(4)(e)6(vii)(II).

Rule 0400-12-01-.03(4)(e)6(vii)(II) states:

(4) Pre-transport Requirements

(e) Accumulation Time

6. A small quantity generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(vii) The generator complies with the following requirements:

(II) The generator must post the following information next to the telephone:

- I. The name and telephone number of the emergency coordinator;
- II. The location of fire extinguishers and spill control material, and, if present, the fire alarm; and
- III. The telephone number of the fire department, unless the facility has a direct alarm.

XVIII.

By failing to maintain signed copies of hazardous waste manifests, the Respondent violated Rule 0400-12-01-.03(5)(a)1.

Rule 0400-12-01-.03(5)(a)1 states:

(5) Recordkeeping and Reporting

(a) Recordkeeping

1. A generator must keep a copy of each manifest signed in accordance with part (3)(d)1 of this rule for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at three years from the date the waste was accepted by the initial transporter.

XIX.

By failing to conduct weekly inspections of hazardous waste storage areas, the Respondent violated Rule 0400-12-01-.03(4)(e)6.(ii), which incorporates Rule 0400-12-01-.05(9)(e).

Rule 0400-12-01-.03(4)(e)6.(ii) states:

(4) Pre-transport Requirements

(e) Accumulation Time

6. A small quantity generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

- (ii) The generator complies with the requirements of Rule 0400-12-01-.05(9), except for Rules 0400-12-01-.05(9)(g) and .05(9)(i);

Rule 0400-12-01-.05(9)(e) states:

(9) Use and Management of Containers

(e) Inspections

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

XX.

By failing to maintain complete weekly inspection records, the Respondent violated Rule 0400-12-01-.03(4)(e)6.(vi), which incorporates Rule 0400-12-01-.05(2)(f)4.

Rule 0400-12-01-.03(4)(e)6.(vi) states:

(4) Pre-transport Requirements

(e) Accumulation Time

6. A small quantity generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(vi) The generator complies with the requirements for owners or operators in parts (2)(f)1, 3, and 4, and paragraph (3) of Rule 0400-12-01-.05, and with all applicable requirements under Rule 0400-12-01-.10; and

Rule 0400-12-01-.05(2)(f)4 states:

(2) General Facility Standards

(f) General Inspection Requirements

4. The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

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 \$3,843.75 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 \$10,470.00 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 20-0006**, 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, HWM20-0006, 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 5th day of August, 2020.



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

Reviewed by:



Ellery R. Richardson (Jul 27, 2020 09:27 CDT)

Ellery R. Richardson
BPR # 32337
Assistant General Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
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