

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

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF SOLID WASTE</b>
	)	<b>MANAGEMENT</b>
<b>MOODY &amp; ASSOCIATES, INC. D/B/A</b>	)	
<b>TECHNICAL PLATING</b>	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. HWM 18-0007</b>
	)	
	)	

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**SETTLEMENT AGREEMENT AND ORDER**

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On August 7, 2018, a Director’s Order and Assessment was issued to Moody & Associates, Inc. (hereinafter “Respondent”). The Respondent filed a timely appeal on September 17, 2018. Pursuant to sections 4-5-105 and 68-212-114 of the Tennessee Code Annotated, the Commissioner and the Respondent have reached a settlement. To implement this settlement: (1) the Commissioner has agreed and by entering into this Settlement Agreement and Order does hereby also dismiss the August 7, 2018 Order; and (2) the Respondent has agreed and by entering into this Settlement Agreement and Order does also hereby waive its right to a contested case hearing before the Board in this matter and withdraws its appeal of the August 7, 2018 Order. This Settlement Agreement and Order resolves and supersedes the August 7, 2018 Order. The Department alleges as follows:

**PARTIES**

**I.**

David W. Salyers, P.E., is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation. The Commissioner is responsible for administering the Tennessee Hazardous Waste Management Act, Tenn. Code Ann. §§ 68-212-101 *et seq.*, and the

Used Oil Collection Act, Tenn. Code Ann. §§ 68-211-1001 *et seq.*, (hereinafter the “Act”). Lisa A. Hughey is the duly appointed Director of the Division of Solid Waste Management (the “Division”). She is delegated by the Commissioner to administer and enforce the Act.

## **II.**

Moody & Associates Inc. ("the Respondent") is a domestic corporation properly registered to conduct business in the State of Tennessee. The Respondent is currently doing business as Technical Plating. Its agent for service of process is Mr. Lowell Moody, 617 Gardenia Way, Murfreesboro, TN 37130. The Respondent is the operator of an electroplating business located at 102 West Woodland Street, Watertown, TN ("the facility"). The Respondent is a large quantity generator of hazardous waste and has an EPA installation identification number of TND 08-146-4810.

## **JURISDICTION**

### **III.**

When provisions of the Act are not being complied with, the Commissioner is authorized to issue orders for correction to the responsible party. Tenn. Code Ann. §§ 68-212-111 and 68-211-1012. Further, the Commissioner has the authority to assess damages and civil penalties against any person who violates any provision of the Act or any rule, regulation, or standard adopted pursuant to said Act. Tenn. Code Ann. §§ 68-212-114 and 68-211-1012. David W. Salyers, Commissioner of the Department of Environment and Conservation, has delegated such authority to Lisa A. Hughey, Director of the Tennessee Division of Solid Waste Management.

### **IV.**

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

## **FACTS**

### **V.**

#### **The February 28, 2018 Compliance Evaluation Inspection**

On February 28, 2018 Division personnel and Environmental Protection Agency ("EPA") personnel conducted a Compliance Evaluation Inspection ("CEI") consisting of a facility inspection and a records review. Adjacent to a decommissioned plating line in Plating Area 2, the Division inspector observed two open 55-gallon drums that were labeled as containing spent filters from the decommissioned line. Because the volume of accumulated waste was greater than 55 gallons and because the drums had been staged at this point of generation since the decommissioning of the plating line, the area was determined by the Division inspector to be a 90-day storage area. Containers in a 90-day storage area are required to remain closed except when adding or removing waste. The Respondent submitted photos of the closed drums on March 7, 2018.

### **VI.**

The Division inspector determined that, because the two open 55-gallon drums in Plating Area 2 were in 90-day containers, weekly inspections of these drums were also required. Weekly inspections of these containers had not been conducted.

### **VII.**

The Division inspector observed an unlabeled 55-gallon drum in Plating Area 2 with an open funnel in one of the bung holes. During the CEI, facility personnel determined that the drum contained acid removed from various points in the plating lines and that when the drum was full, the acid would be transferred to the facility's wastewater equalization tank. Because the intended disposition of this acid is treatment for disposal, a hazardous waste determination must be made at

the point of generation. A hazardous waste determination had not been conducted at the point of generation. Facility personnel labeled the drum with the words "Hazardous Waste" during the CEI and transferred the contents to the equalization tank on March 2, 2018.

#### **VIII.**

The Division inspector observed a 55-gallon drum containing an unknown solid material located inside a decommissioned walk-in drying oven near Plating Area 2. A hazardous waste determination had not been conducted on the contents of this drum. Facility personnel placed the contents of this drum in the wastewater treatment sludge bulk collection bag for disposal on March 2, 2018.

#### **IX.**

The Division inspector observed one bulk bag in the 90-day storage area which contained spent effluent filters that had an accumulation start date of "November 2015". A facility that stores hazardous waste for more than 90 days without having been granted an extension from the Commissioner is considered to be operating a storage facility and is subject to those permitting requirements. The Respondent shipped the contents of this bag to a permitted disposal facility on March 21, 2018.

#### **X.**

The Division inspector observed one bulk bag of hazardous wastewater treatment sludge in the 90-day storage area that was not closed. Facility personnel closed this bag during the CEI.

#### **XI.**

The Division inspector observed small amounts of hazardous wastewater treatment sludge on the outside of two bulk bags in the 90-day storage area, as well as on and under the pallets

holding the bags. Facility personnel cleaned up this material and placed it in a bulk collection bag during the CEI.

## **XII.**

The Division inspector observed five 55-gallon drums containing a hazardous parts cleaning solution which were accumulating in the wastewater treatment area, waiting to be processed through the treatment system. These drums were not marked with accumulation start dates. Facility personnel placed the contents of four of the drums in the facility's wastewater treatment system on March 2, 2018. The fifth drum was determined to be empty.

## **XIII.**

The Division inspector observed that the five 55-gallon drums accumulating in the wastewater treatment area were inadequately labeled to clearly identify their contents. Facility personnel placed the contents of the drums in the wastewater treatment system on March 2, 2018. The fifth drum was determined to be empty.

## **XIV.**

The Division inspector observed small amounts of hazardous wastewater treatment filter press sludge on the floor around the filter press, on the ramp leading outside of the wastewater treatment system, and on the pavement outside of the building. Facility personnel cleaned up this material and placed it in a bulk collection bag during the CEI.

## **XV.**

The Division inspector observed that the bulk collection bag beneath the filter press was not labeled to identify its contents. Facility personnel labeled the bag with the words "Hazardous Waste" during the CEI. The Division inspector observed that the bulk collection bag beneath the

filter press was not closed when it was not receiving waste. Facility personnel closed the bag during the CEI.

**XVI.**

The Respondent could not provide records of the weekly inspections of the 90-day storage area from August 2016 through January 2017. The Division inspector observed that the available weekly inspections of the 90-day storage area did not have the full name of the employee conducting the inspections, as required. The Respondent submitted a modified weekly inspection form on March 5, 2018.

**XVII.**

The Division inspector observed that the Respondent had not distributed current copies of the facility's emergency contingency plan to local emergency response agencies. The Division inspector observed copies of return receipts of these submittals during a follow-up inspection conducted on June 1, 2018.

**XVIII.**

The Division inspector observed that the facility's emergency contingency plan did not have the most current secondary contact information. The Respondent submitted an updated copy of the emergency contingency plan on March 5, 2018.

**XIX.**

The Division inspector observed that the Respondent could not produce documentation of required training for personnel who handle hazardous waste. The Respondent submitted documentation of the online training that was conducted in 2017 on March 5, 2018.

**XX.**

In a series of email communications on March 5, 2018, the Respondent submitted documentation of the substantial correction of all outstanding violations with the exception the distribution of the emergency contingency plan to local emergency response agencies and required adequate training for employees who handle hazardous waste.

**XXI.**

On April 13, 2018, the Division issued a Notice of Violation (“NOV”) to the Respondent for the violations noted during the CEI. The Respondent was instructed to initiate actions to correct any outstanding violations and was notified that a follow-up inspection would be conducted within 30 days.

**XXII.**

On April 30, 2018 the Division sent the Respondent an Opportunity to Meet and Show Cause letter. The Respondent accepted this opportunity to meet and a Show Cause Meeting was scheduled for June 5, 2018.

**XXIII.**

On June 1, 2018, Division personnel conducted a follow-up CEI and observed that all outstanding violations had been corrected.

**XXIV.**

On June 5, 2018, a Show Cause Meeting was held. The Respondent presented documentation of process and waste handling changes that had been implemented since the CEI.

**XXV.**

During the course of investigation, the Division has incurred DAMAGES in the amount of FIVE THOUSAND SEVEN HUNDRED FORTY-TWO DOLLARS AND THIRTY-TWO CENTS (\$5,742.32).

**VIOLATIONS**

**XXVI.**

The Respondent failed to close containers of hazardous waste, as required by Rule 0400-12-01-.03(4)(e)2(i)(I), which incorporates Rule 0400-12-01-.05(9)(d)I.

Rule 0400-.12-01-.03(4)(e)2(i)(I) states:

(4) Pre-transport Requirements

(e) Accumulation Time

2. Except as provided in parts 6, 7 and 8 of this subparagraph, a generator may accumulate hazardous waste on-Site for 90 days or less without a permit or without having interim status, provided that:

(i) The waste is placed:

(I) In containers and the generator complies with the applicable requirements of Rules 0400-12-01-.05(9), (27), (28), and (29)

Rule 0400-12-01 -.05(9)(d)1 states:

(9) Use and Management of Containers



(d) Management of Containers

1. A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

By failing to close containers of hazardous waste, the Respondent violated Rule 0400-12-01-.03(4)(e)2(i)(1), which incorporates Rule 0400-12-01-.05(9)(d)(1).

**XXVII.**

The Respondent failed to conduct weekly inspections of 90-day storage areas and containers, as required by Rule 0400-12-01-.03(4)(e)2(i)(I), which incorporates Rule 0400-12-01-.05(9)(e).

Rule 0400-12-01-.03(4)(e)2(i)(I) states:

(4) Pre-transport Requirements

(d) Accumulation Time

2. Except as provided in parts 6, 7 and 8 of this subparagraph, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

- (I) In containers and the generator complies with the applicable requirements of Rules 0400-12-01-.05(9), (27), (28), and (29)

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.

By failing to conduct weekly inspections of 90-day storage areas and containers, the

Respondent violated Rule 0400-12-01-.03(4)(e)2(i)(I), which incorporates Rule 0400-12-01-.05(9)(e).

### **XXVIII.**

The Respondent failed to conduct hazardous waste determinations on two drums of unknown waste material, as required by Rule 0400-12-01-.03(1)(b).

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

(1) General

(b) Hazardous Waste Determination

A person who generates a solid waste, as defined in Rule 0400-12-01-.02(1)(b), must determine if that waste is a hazardous waste using the following method:

1. He should first determine if the waste is excluded from regulation under Rule 0400-12-01-.02(1)(d).
2. He must then determine if the waste is listed as a hazardous waste in Rule 0400-12-01-.02(4).

(Note: Even if the waste is listed, the generator still has an opportunity under 40 CFR 260.22 to demonstrate to the EPA Regional Administrator that the waste from his particular facility or operation is not a hazardous waste.)

3. For purposes of compliance with Rule 0400-12-01-.10, or if the waste is not listed in Rule 0400-12-01-.02(4), the generator must then determine whether the waste is identified in Rule 0400-12-01-.02(3) by either:
  - (i) Testing the waste according to the methods set forth in Rule 0400-12-01-.02, or according to an equivalent method approved by the Commissioner under Rule 0400-12-01-.01(3)(b); or
  - (ii) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.
4. If the waste is determined to be hazardous, the generator must refer to Rules 0400-12-01-.02, .05, .06, .09, .10 and .12 for possible exclusions or restrictions pertaining to management of the specific waste.
5. This subparagraph does not apply to individual wastewaters streams as described in part (2)(a)2 of this rule in cases where the generator makes a hazardous waste determination on the conglomerate flow. A proper determination of the conglomerate flow must include both an evaluation

of the hazardous waste characteristics of the conglomerate flow as defined in Rule 0400-12-01-.02(3) as well as an evaluation of the facility's wastewater generating processes to confirm the presence or absence of listed hazardous wastewaters as defined in Rule 0400-12-01-.02(4) in the wastewater.

(Comment: This provision does not supersede any applicable exclusion from recordkeeping, notification, or reporting requirements for hazardous waste otherwise specified in this rule.)

By failing to conduct hazardous waste determinations on two drums of unknown waste material, the Respondent violated Rule 0400-12-01-.03(1)(b).

### **XXIX.**

The Respondent stored hazardous waste for greater than 90 days and was therefore operating a storage facility without having interim status or a permit, in violation of Rule 040012-01-.03(4)(e)3, which incorporates Rule 0400-12-01-.07(1)(b)(ii).

Rule 0400-12 -01 - .03 (4) ( e)3 . states:

(4) Pre-transport Requirements

(e) Accumulation Time

3. A generator of 1000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kilogram of acute hazardous waste listed in subparagraph (4)(b) or part (4)(d)5 of Rule 0400-12-01-.02 in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Rule 0400-12-01-.05 and 0400-12-01-.06 and the permit requirements of Rule 0400-12-01-.07 unless he has been granted an extension to the 90-day period. Such extension may be granted by the Department if hazardous wastes must remain on-site for more than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Commissioner on a case-by-case basis.

Rule 0400-12-01-.07(1)(b)1.(ii) states:

(1) General

(b) Scope/Applicability

The requirements of this rule apply as specified to owners and operators of new and existing hazardous waste management facilities in Tennessee.

Except as may be specifically provided otherwise in this rule or in Rule 0400-12-01-.02:

- (ii) No existing hazardous waste management facility in Tennessee can lawfully treat, store, or dispose of hazardous waste unless the owner and operator has a permit under the Act or interim status as provided in paragraph (3) of this rule.

By operating a storage facility without having interim status or a permit, the Respondent violated Rule 0400-12-01-.03(4)(e)3, which incorporates Rule 0400-12-01-.07(1)(b)(ii).

**XXX.**

The Respondent failed to maintain and operate the facility to minimize the possibility of the release of hazardous waste, as required by Rule 0400-12-01-.03(4)(e)2(iv), which incorporates Rule 0400-12-01-.05(3)(b).

Rule 0400-12-01 -.03 (4) (e)2 (iv) states:

(4) Pre-transport Requirements

(e) Accumulation Time

- 2. Except as provided in parts 6, 7 and 8 of this subparagraph, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

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

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

(3) Preparedness and Prevention

(b) Maintenance and Operation of Facility

Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

By failing to maintain and operate the facility to minimize the possibility of the release of hazardous waste, the Respondent violated Rule 0400-12-01-.03(4)(e)2(iv), which incorporates Rule 0400-12-01-.05(3)(b).

**XXXI.**

The Respondent failed to mark containers of hazardous waste with an accumulation start date, as required by Rule 0400-12-01-.03(4)(e)2(ii).

Rule 0400-12-01-.03(4)(e)2(ii) states:

(5) Pre-transport Requirements

(e) Accumulation Time

2. Except as provided in parts 6, 7 and 8 of this subparagraph, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

(ii) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

By failing to mark containers of hazardous waste with an accumulation start date, the Respondent violated Rule 0400-12-01-.03(4)(e)2(ii).

**XXXII.**

The Respondent failed to label 90-day storage containers with the words "Hazardous Waste", as required by Rule 0400-12-01-.03(4)(e)2(iii).

Rule 0400-12-01-.03 (4)(e)2(iii) states:

(4) Pre-transport Requirements

(e) Accumulation Time

2. Except as provided in parts 6, 7 and 8 of this subparagraph, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

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

By failing to label 90-day storage containers with the words "Hazardous Waste", the Respondent violated Rule 0400-12-01-.03 (4)(e)2(iii).

### **XXXIII.**

The Respondent failed to label a satellite accumulation area container with the words "Hazardous Waste" or other words to identify the contents of the container, as required by Rule 0400--12-01-.03 (4) (e)5(i) (II).

Rule 0400-12 -01 - .03 (4) (05 (i)(II) states:

(4) Pre-transport Requirements

(e) Accumulation Time

- 5. (i) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acute hazardous waste listed in Rule 0400-12-01-.02(4)(b) or (4)(d)5, 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 part 2 of this subparagraph provided he:

- (I) Marks his container's either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

By failing to label a satellite accumulation container with the words "Hazardous Waste" or other words to identify the contents of the container, the Respondent violated Rule 0400-1201-.03 (4)(e)5.

### **XXXIV.**

The Respondent failed to include the full employee name on the weekly inspection log, as required by Rule 0400-12-01-03.(4)(e)2(iv), which incorporates Rule 0400-12-01-.05(2)(f)4.

Rule 0400-12-01-03.(4)(e)2(iv) states:

(4) Pre-transport Requirements

(e) Accumulation Time

2. Except as provided in parts 6, 7 and 8 of this subparagraph, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

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

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.

By failing to include the full employee name on the weekly inspection log, the Respondent violated Rule 0400-12-01-03.(4)(e)2(iv), which incorporates Rule 0400-12-01-.05(2)(04).

**XXXV.**

The Respondent failed to distribute copies of the facility contingency plan to local emergency response agencies, as required by Rule 0400-12-01-03.(4)(e)2(iv), which incorporates Rule 0400-12-01-.05(4)(d)2.

Rule 0400-12-01-.03(4)(e)2(iv) states:

(4) Pre-transport Requirements

(e) Accumulation Time

2. Except as provided in parts 6, 7 and 8 of this subparagraph, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

(iv) The generator complies with the requirements for owners or operators in parts (2)(f)1, 3, and 4, subparagraph (2)(g) and paragraphs (3) and

(4) of Rule 0400-12-01-.05 and with all applicable requirements under Rule 0400-12-01-.10;

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

(4) Contingency Plan and Emergency Procedures

(d) Copies of Contingency Plan

A copy of the contingency plan and all revisions to the plan must be:

2. Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

By failing to distribute copies of the facility contingency plan to local emergency response agencies, the Respondent violated Rule 0400-12-01-.03(4)(e)2(iv), which incorporates Rule 0400-12-01-.05(4)(d)2.

**XXXVI.**

The Respondent failed to maintain current emergency contact information in the contingency plan, as required by Rule 0400-12-01-.03(4)(e)2(iv), which incorporates Rule 0400-12-01-.05(4)(c)4.

Rule 0400-12-01-.03(4)(e)2(iv) states:

(4) Pre-transport Requirements

(e) Accumulation Time

2. Except as provided in parts 6, 7 and 8 of this subparagraph, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

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

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



(4) Contingency Plan and Emergency Procedures

(c) Contents of Contingency Plan

4. The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see subparagraph (f) of this paragraph), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

By failing to maintain current emergency contact information in the contingency plan, the Respondent violated Rule 0400-12-01-.03(4)(e)2(iv), which incorporates Rule 0400-12-01-.05 (4)(c)4.

**XXXVII.**

The Respondent failed to provide training of employees who handle hazardous waste, as required by Rule 0400-12-01-.03(4)(e)2(iv), which incorporates Rule 0400-12-01-.05(2)(g)4(iv).

Rule 0400-12-01 - .03 (4) (e)2 (iv) states:

(4) Pre-Transport Requirements

(e) Accumulation Time

2. Except as provided in parts 6, 7 and 8 of this subparagraph, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:
  - (iv) The generator complies with the requirements for owners or operators in parts (2)(f)1, 3, and 4, subparagraph (2)(g) and paragraphs (3) and (4) of Rule 0400-12-01-.05 and with all applicable requirements under Rule 0400-12-01-.10;

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

(2) General Facility Standards

(g) Personnel Training

4. The owner or operator must maintain the following documents and records at the facility:

- (iv) Records that document that the training or job experience required under parts 1, 2, and 3 of this subparagraph has been given to, and completed by, facility personnel.

By failing to provide training of employees who handle hazardous waste, the Respondent violated Rule 0400-12-01-.03(4)(e)2(iv), which incorporates Rule 0400-12-01-.05(2)(g)4(iv).

**XXXVIII.**

The Respondent failed to comply with the aforementioned Rules, as required by Tenn. Code Ann. § 68-212-105(4), which states:

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.

By failing to comply with the Rules, the Respondent violated Tenn. Code Ann. § 68.212-105(4).

**ORDER AND ASSESSMENT**

**XXXIX.**

WHEREFORE, PREMISES CONSIDERED, pursuant to the authority vested by Tenn. Code Ann. §§ 68-212-111 and 68-212-114, I, Lisa Hughey orders, and the Respondent Agrees, as follows:

- (1)
  - (i) The Division assessed a civil penalty in the amount of TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$25,500.00) under Directors Order HWM18-0007. The Respondent has proposed a Supplemental Environmental Project

(SEP) to offset the civil penalty. All SEP project(s) must have a 2:1 value of the offset portion of the penalty in accordance with the Supplemental Environmental Project policy of the TDEC Bureau of Environment dated April 2, 2020. Therefore, the value must be at least FIFTY-ONE THOUSAND DOLLARS (\$51,000.00). The SEP project, including the timetable for completion, shall become an enforceable portion of this Order.

(ii) The Respondent's SEP is directed to eliminating its production of hazardous waste. This constitutes a both a pollution removal and reduction program and is eligible for maximum benefit as a SEP. The SEP will require the Respondent to incur capital costs to:

1. Purchase a Volute Screw Press;
2. Purchase four 2,500-gallon cone bottom tanks;
3. Purchase a Heated Vacuum Ribbon Blender or filter press;
4. Purchase an Ultra-Filtration/Reverse Osmosis System; and
5. Purchase and install a wastewater evaporator/Crystallizer

This project is not required by any regulatory requirement, recognizing that all facilities do have hazardous waste reduction plans. It will be completed by December 31, 2021, at an estimated cost of between \$107,500 and \$134,500, which will satisfy the requirement of a 2:1 offset value. A more detailed explanation is attached as **Exhibit A**. The Respondent will submit documentation of the implementation of this SEP to the Division.

(iii) If the Respondent does not complete the SEP by the deadline of December 31, 2021, then the penalty of \$25,500 will become due and payable at that date.

(2) The Respondent shall, on or before the 31st day after execution of this Order, pay damages to the Division in the amount of \$ FIVE THOUSAND SEVEN HUNDRED FORTY-TWO DOLLARS AND THIRTY-TWO CENTS (\$5,742.32).

(3) All payments 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, 10th Floor Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243.

(4) The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

(5) “Force majeure,” for purposes of this Settlement Agreement and Order, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent’s contractors that delays or prevents the performance of any obligation under this Settlement Agreement and Order despite Respondent’s best efforts to fulfill the obligation. The requirement that Respondent exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. “Force Majeure” does not include Respondent’s financial inability to perform any obligation under this Settlement Agreement and Order. Notwithstanding the foregoing, any failure by any contractor or supplier to design or install the equipment necessary to meet any required timeframe to accomplish a defined task set forth herein may constitute “Force Majeure” to the extent that any such failure to meet a timeframe is caused by the COVID-19 public health crisis, even though

COVID-19 is already under way, provided, that Respondents otherwise meet the requirements for force majeure under this Settlement Agreement and Order.

If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement and Order, whether or not caused by a force majeure event, Respondent shall provide notice orally or by electronic or facsimile transmission to the Division in accordance within seventy-two (72) hours of when Respondent first knew that the event might cause a delay. Within seven (7) Days thereafter, Respondent shall provide in writing to the Division an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event for the period of such failure to comply, and

The Director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent

fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Failure to comply with any of the requirements of this Order and Assessment could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and recovery of costs.

The Parties agree the foregoing Settlement Agreement and Order is a fair and reasonable resolution of this case.

#### **XL.**

#### **DEPARTMENT'S RESERVATION OF RIGHTS**

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the 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/or 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).

#### **XLI.**

#### **RESPONDENT'S RESERVATION OF RIGHTS**

The Respondent does not admit or deny the factual allegations, or the alleged violations of law contained in this Consent Order and Assessment. The Respondent reserves its rights to contest the factual allegations and alleged violations contained in this Settlement Agreement and Order in any proceeding other than a proceeding brought by the Department to enforce the terms of this Settlement Agreement and Order.

**XLII.**

**AUTHORITY TO SIGN**

The undersigned representatives of the Department and the Respondent hereby represent and warrant that they are fully authorized and competent to execute this Consent Order and Agreement on behalf of the entity for which they are signing. Issued by the Director of the Division of Solid Waste Management, Tennessee Department of Environment and Conservation, and agreed to by Moody & Associates, Inc. d/b/a Technical Plating, effective as of the date of the last signature below.

*Ellery R. Richardson*

[Ellery R. Richardson \(Aug 26, 2020 11:04 CDT\)](#)

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**EXHIBIT A**

**The Respondent's Supplemental Environmental Project**



# Reduction Projects Towards Zero Liquid Discharge

- Step 1: Renovate Current Pretreat area to accommodate updated System
- Step 2: Incorporate elements of UF/RO.....evaporation

	Project Description	Estimated Cost (\$)	Status	Waste Stream Impact	Estimated Date
1	Purchase Volute Screw Press. Super duplex stainless (Step 1)	\$15,000 – \$25,000	Awaiting PO	Eliminate 106294 Kg of chrome rinse waters (50% reduction)	June 2020
2	Purchase 4 x 2500 gallon cone bottom tanks (Step 1)	\$14,000 - \$22000	Awaiting PO	Consolidation of Pretreatment area to prepare for addition UF/RO & Waste Water Evaporator	June 2020
3	Purchase Heated Vacuum Ribbon Blender (Step 1) or filter press.	\$8000 - \$17000	Awaiting PO	Remove water from solids by drying to within 45% to 75%	July 2020
4	Purchase UF/RO System (Step 2)	\$22,000 Est.	Awaiting Pretreatment Renovation	Will provide the capability of reclaiming up to 80% of water	July 2021
5	Wastewater Evaporator/Crystallizer	\$48,500 est.	Install of UF/RO	- Will provide possibility of reducing the concentrate from RO to solid.....state	Sept 2021