



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Solid Waste Management
Davy Crockett Tower, 7th Floor
500 James Robertson Parkway
Nashville, Tennessee 37243

January 17, 2025

Corporation Service Company – Registered Agent
2908 Poston Avenue
Nashville TN 37203-1312

CERTIFIED MAIL
7006 0810 0001 9167 9018
RETURN RECEIPT REQUESTED

RE: CASE NO. HWM 24-0015 THE SHERWIN-WILLIAMS COMPANY

To Whom It May Concern:

Enclosed please find an Order and Assessment issued to The Sherwin-Williams Company, 404 East Mallory Avenue, Memphis, Tennessee, by the Tennessee Department of Environment and Conservation, Division of Solid Waste Management. Please read it carefully and pay special attention to the NOTICE OF RIGHTS section. In addition to the instructions for payment of any penalties or damages contained in this Order and Assessment, please provide proof of the submittal of the payment to Mark.A.Jordan@tn.gov by email or by mail to the address shown above for the Division's internal documentation.

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 (Jan 17, 2025 10:56 CST)

Christopher Lagan, P.G.
Regulatory Compliance and Enforcement Manager

cc: Alan Newman, EPA Region 4, Atlanta, GA
Lisa A. Hughey, Director, DSWM
Rob Ashe, Deputy Director of Field Operations, DSWM
Beverly Philpot, Hazardous Waste Program Manager, DSWM
Jim Holt, Memphis Environmental Field Office Manager, DSWM
Morgan Beck, Environmental, DSWM
Records.SWM@tn.gov

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

IN THE MATTER OF:)	DIVISION OF SOLID WASTE
)	MANAGEMENT
SHERWIN-WILLIAMS COMPANY)	
)	
TND-00-701-7304)	CASE NO. HWM 24-0015
)	
RESPONDENT)	

DIRECTOR'S 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 and the Tennessee Used Oil Collection Act of 1993, Tennessee Code Annotated sections 68-211-1001 through -1019 (Acts). 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 Acts.

II.

The Sherwin-Williams Company, (Sherwin-Williams or Respondent) is a foreign corporation created in the State of Ohio and is authorized to conduct business in the State of Tennessee. Its agent for service of process is Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203-1312.

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 68-211-1012. 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 68-211-1012. 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 Acts or any rule or regulation authorized by the Acts 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(b) and 68-211-1012. 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 Acts.

FACTS

VI.

The Respondent manufactures paints for traffic applications at its facility (facility) located at 404 East Mallory Avenue, Memphis, Tennessee 38109. The facility has reported operating as a large quantity generator of hazardous waste and a small quantity handler of universal waste. The facility has an Environmental Protection Agency installation identification number of TND007017304 and has notified the Division of the generation of eleven hazardous waste streams.

VII.

The April 10, 2024, Compliance Evaluation Inspection

On April 10, 2024, Division personnel conducted a Compliance Evaluation Inspection (CEI), consisting of a facility walk-through of areas related to the generation and management of hazardous waste, universal waste, and a records review.

VIII.

In the Quality Control Laboratory (QC) area, the Division inspector observed:

- One satellite accumulation area container (SAA) of solvent-contaminated wipes was not labeled with the words “Hazardous Waste.” (Corrected during the CEI.)

Outside of the QC laboratory area, through a hallway and two doors, facility personnel were utilizing a room as a SAA. Because this location was not adjacent to the QC laboratory, not

at or near the point of generation, and not under the control of the QC lab operators, Division personnel determined this area to be a central accumulation area (CAA), not an SAA. In this laboratory CAA room, Division personnel observed:

- Two 55-gallon drums labeled “H Alkyd Liquid” did not have accumulation start dates and one was not marked with an indication of the hazards of the contents.
- One 55-gallon drum labeled “H Coal Tar” did not have an accumulation start date and was not marked with an indication of the hazards of the contents. (Hazard indicator placed on the drum during the CEI.)
- One 55-gallon drum labeled “H Rags” did not have an accumulation start date.
- No spill kits were present in this CAA.

In the mixing tank and production lines area (Lower Level), the Division inspector observed:

- One 55-gallon SAA container was not labeled with the words “Hazardous Waste.” (Corrected during the CEI.)

In the Main CAA, the Division inspector observed:

- Four of forty-one 55-gallon drums were not marked with an indication of the hazards of the contents. (Corrected during the CEI.)
- No spill kits were present.

IX.

During the records review, the Division inspector observed:

- Annual Reports for 2021 through 2023 did not reflect universal waste activity and, toxicity codes were missing on the associated waste stream reports.
- One manifest was not available for review (#022451279JJK0.)
- Weekly inspections for the laboratory CAA had not been conducted.
- The facility hazardous waste reduction plan was not signed and not dated.
- The annual progress report had not been updated since 2021.

- No documentation of the attempts to make arrangements with local emergency response agencies was available.
- The facility contingency plan emergency contact information was not up to date.
- The facility quick reference guide (QRG) had not been submitted to local emergency response agencies.

X.

On May 22, 2024, the Division sent a Notice of Violation (NOV) to the Respondent, documenting the observations made during the April 10, 2024, CEI. The NOV cited the following Rules violations:

1. Failure to label two SSA containers with the words “Hazardous Waste”.
2. Failure to mark six CAA containers with an indication of the hazards of the contents.
3. Failure to mark four CAA containers with an accumulation start date.
4. Failure to provide spill kits in both CAA locations.
5. Failure to indicate universal waste handling activities on annual reports from 2021 through 2023.
6. Failure to correctly list hazardous waste toxicity codes for two of eleven waste streams on the 2023 Waste Shipment Report form.
7. Failure to provide a signed, return to sender copy of one manifest.
8. Failure to conduct weekly inspections of the QC Laboratory CAA.
9. Failure to sign and date the facility Hazardous Waste Reduction Plan.
10. Failure to update the facility Hazardous Waste Reduction Plan and to provide an annual progress report.
11. Failure to document attempts to make arrangements with local emergency response agencies.
12. Failure to update the facility emergency contact list.
13. Failure to submit a Quick Reference Guide to local emergency response agencies.

The Division acknowledged that violations #1 and #2 were corrected during the CEI. The Respondent was instructed to initiate corrective measures for all outstanding violations.

XI.

On June 25, 2024, the Respondent submitted documentation to the Division via email, which indicated the correction of all outstanding violations cited in the May 22, 2024, NOV. This documentation included a copy of the missing manifest, placement of spill kits in both CAAs, copies of the corrected annual reports and waste stream reports, weekly inspection logs for the QC laboratory CAA, updates to the facility contingency plan, and certified mail receipts documenting the attempts to make arrangements with local emergency agencies as well as the submittal of the quick reference guide to those agencies.

XII.

The June 27, 2024, Follow Up Inspection

On June 27, 2024, Division personnel conducted a follow-up inspection at the facility. The Division inspector observed the correction of all violations, as outlined in the Respondent's email of June 25, 2024. The Division acknowledged the correction of all violations in a letter to the Respondent dated July 3, 2024.

XIII.

On July 23, 2024, the Respondent sent a letter to the Division via email regarding the April 10, 2024 inspection and subsequent May 22, 2024 NOV. In this letter, dated July 8, 2024, the Respondent disputed the Division's determination regarding the QC Laboratory area CAA. The Respondent stated that they were not aware of any specific guidance that would require an SAA to be physically within the QC Laboratory and that this room had been used as a SAA for many years without the Division determining it to be a CAA during previous inspections. On

July 25, 2024, the Division sent a letter to the Respondent offering the opportunity to schedule a Show Cause meeting to discuss the violations noted during the April 10, 2024, CEI and subsequent communications. The Show Cause meeting was held on August 19, 2024, during which the violations noted during the CEI were discussed. The Respondent again disputed the Division's determination regarding the QC Laboratory area CAA, stating that previous inspections by the Division had not determined this room to be CAA. Division personnel referred the Respondent to Rule 0400-12-01-.03(i)(f) which outlines the requirements of waste accumulation "*...in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of process generating the waste...*". No new or additional information regarding waste handling practices was presented.

XIV.

On August 21, 2024, the Division formally responded to the July 23, 2024, email submittal. The Division again referred the Respondent to Rule 0400-12-01-.03(i)(f) which outlines the requirements of waste accumulation "*...in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of process generating the waste...*". The Division also noted that the previous inspection report dated January 17, 2020, referred to this room as the "Raw Materials Store House" and inferred that raw materials and used oil were stored in this area, with no mention of a SAA. On August 23, 2024, the Division sent a letter informing the Respondent that enforcement would continue.

XV.

During the course of the investigation of the Respondent's facility, the Division has incurred damages in the amount of **\$1,500.00**.

VIOLATIONS

XVI.

The Respondent failed to label SAA containers with the words “Hazardous Waste”, as required by Rule 0400-12-01-.03(1)(f)1.(v)(I), which is a condition for exemption from the requirement to obtain a permit for the treatment, storage, and disposal of hazardous waste.

XVII.

The Respondent failed to mark CAA containers with an indication of the hazards of the contents, as required by Rule 0400-12-01-.03(1)(h)1.(v)(I)II, which is a condition for exemption from the requirement to obtain a permit for the treatment, storage, and disposal of hazardous waste.

XVIII.

The Respondent failed to mark CAA containers with accumulation start dates, as required by Rule 0400-12-01-.03(1)(h)1.(v)(I)III, which is a condition for exemption from the requirement to obtain a permit for the treatment, storage, and disposal of hazardous waste.

XIX.

The Respondent failed to provide CAA spill kits, as required by Rule 0400-12-01-.03(1)(h)1.(vi), which references Rule 0400-12-01-.03(12)(c)3, which is a condition for exemption from the requirement to obtain a permit for the treatment, storage, and disposal of hazardous waste.

XX.

The Respondent failed to notify the Division regarding the handling of universal waste batteries and lamps, as required by Rule 0400-12-01-.03(2)(d)1.(ii).

XXI.

The Respondent failed to correctly identify toxicity criteria on waste stream reports for 2021 through 2023, as required by Rule 0400-12-01-.03(2)(d)1.(ii).

XXII.

The Respondent failed to maintain a copy of one manifest as required by Rule 0400-12-01-.03(5)(a)1.

XXIII.

The Respondent failed to conduct weekly inspections of the QC Laboratory CAA, as required by Rule 0400-12-01-.03(1)(h)1.(1)(V)I, which is a condition for exemption from the requirement to obtain a permit for the treatment, storage, and disposal of hazardous waste.

XXIV.

The Respondent failed to sign the facility hazardous waste, as required by Rule 0400-12-01-.03(6)(b)1.(i).

XXV.

The Respondent failed to update the facility hazardous waste reduction plan and include the annual progress report, as required by Rule 0400-12-01-.03(6)(c)1.

XXVI.

The Respondent failed to document attempts to make arrangements with local emergency response agencies, as required by Rule 0400-12-01-.03(1)(h)1.(vi), which references Rule 0400-12-01-.03(12)(g)2, which is a condition for exemption from the requirement to obtain a permit for the treatment, storage, and disposal of hazardous waste.

XXVII.

The Respondent failed to update the facility emergency contact list, as required by Rule 0400-12-01-.03(1)(h)1.(vi), which references Rule 0400-12-01-.03(12)(k)4., which is a condition for exemption from the requirement to obtain a permit for the treatment, storage, and disposal of hazardous waste.

XXVIII.

The Respondent failed to submit the updated facility quick reference guide to local emergency response agencies, as required by Rule 0400-12-01-.03(1)(h)1.(vi), which references Rule 0400-12-01-.03(12)(j)3., which is a condition for exemption from the requirement to obtain a permit for the treatment, storage, and disposal of hazardous waste.

XXIX.

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 Tennessee Code Annotated section § 68-212-105(4).

ORDER AND ASSESSMENT

XXX.

Under the authority vested by sections 68-212-111 and 68-212-114 of the Acts, I, Lisa A. Hughey, issue the following Order and Assessment to the Respondent:

1. The Respondent is assessed DAMAGES in the amount of **\$1,500.00** to be paid to the State on or before the 31st day after receipt of this Order and Assessment.
2. The Respondent is assessed a CIVIL PENALTY in the amount of **\$3,220.00** to be paid to the State on or before the 31st day after receipt of this Order and Assessment.

3. Payment of the DAMAGES AND CIVIL PENALTY totaling **\$4,720.00** should reference Case No. HWM 24-0015 be made payable to “Treasurer, State of Tennessee,” and sent to the Division of Fiscal Services – Consolidated Fee Section, Davy Crockett Tower, 500 James Robertson Parkway, 6th 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 Acts or regulations promulgated thereunder or the authority to assess costs, civil penalties and/or damages incurred by the State against the Respondent(s). 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).

NOTICE OF RIGHTS

The Respondent(s) may appeal this Order and Assessment. Tenn. Code Ann. §§ 68-212-113 and 114. 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 -326 (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, Davy Crockett Tower, 500 James Robertson Parkway, 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, Davy Crockett Tower, 500 James Robertson Parkway, 6th 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, Davy Crockett Tower, 500 James Robertson Parkway, 7th Floor, Nashville, TN 37243. Attorneys should contact the undersigned counsel of record. **The case number, HWM 24-0015, 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 17th day of January, 2025.



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

Reviewed by:



** (Jan 17, 2025 10:18 CST)

Denard Mickens
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Senior Associate Counsel
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Nashville, Tennessee 37243
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