

**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>MULLICAN FLOORING, L.P.</b>	)	
<b>TND 98-778-2968</b>	)	
	)	<b>CASE NO. HWM 16-0010</b>
<b>RESPONDENT</b>	)	

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**SETTLEMENT AGREEMENT AND ORDER**

On July 12, 2016, a Director's Order was issued to Mullican Flooring, L.P. ("Respondent"). The Respondent filed a timely appeal on August 23, 2016. Pursuant to Tennessee Code Annotated (Tenn. Code Ann.) §§ 4-5-105 and 68-212-114, 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 July 12, 2016 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 in this matter and withdraws its appeal of the July 12, 2016 Order. This Settlement Agreement and Order resolves and supersedes the July 12, 2016 Order. The Parties stipulate and agree to the following:

**PARTIES**

**I.**

Robert J. Martineau, Jr., is the duly appointed Commissioner of the Department. The Commissioner is responsible for administering the Tennessee Hazardous Waste Management Act (hereinafter the "Act"), Tenn. Code Ann. § 68-212-101 *et. seq.* Patrick J. Flood is the duly

appointed Director of the Division of Solid Waste Management (the "Division"). He has received written delegation from the Commissioner to administer and enforce the Act.

**II.**

Mullican Flooring, L.P. (the "Respondent") is a foreign corporation formed in Delaware and properly registered to do business in Tennessee. Its agent for service of process is C T Corporation System, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710. The Respondent operates a hardwood and veneer flooring manufacturing company (the "facility") located at 655 Woodlyn Road, Johnson City, Washington County, Tennessee. The Respondent is a Large Quantity Generator of hazardous waste. The facility has an EPA installation identification number of TND 98-778-2968.

**JURISDICTION**

**III.**

When provisions of the Act are not being complied with, the Commissioner or his representative is authorized by Tenn. Code Ann. § 68-212-111 to issue orders for correction to the responsible party. Further, Tenn. Code Ann. § 68-212-114 gives the Commissioner or his authorized representative the authority to assess damages and civil penalties against any person who violates any provision of the above-mentioned Act or any rule, regulation, or standard adopted pursuant to said Act.

**IV.**

The Respondent is a "person" within the meaning of Tenn. Code Ann. § 68-212-104(14).

## **FACTS**

### **V.**

On February 23 and 24, 2016 the Division conducted a Compliance Evaluation Inspection ("CEI") at the facility. The Division inspector observed two 10 gallon flammable containers of solvent wipes located in the coating area and one 10 gallon flammable container of solvent wipes located in the hazardous waste 90 day accumulation area that were not labeled with the words "Excluded Solvent-Contaminated Wipes".

### **VI.**

The facility did not have a description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal.

### **VII.**

The Division inspector observed nineteen 55 gallon containers of coating/solvent waste that were not labeled with the words "Hazardous Waste" in the hazardous waste 90 day accumulation area.

### **VIII.**

The Division inspector observed nineteen 55 gallon containers of coating/solvent waste that did not have an accumulation start date in the hazardous waste 90 day accumulation area.

### **IX.**

The Division inspector observed three open 55 gallon containers of coating/solvent waste in the hazardous waste 90 day accumulation area.

**X.**

The Division inspector observed that coating/solvent waste was on the floor around one of the hazardous waste containers and not properly containerized in the hazardous waste 90 day accumulation area.

**XI.**

The Division inspector observed that adequate aisle space was not available between the containers of hazardous waste in the hazardous waste 90 day accumulation area.

**XII.**

The Division inspector found that the facility emergency plan did not meet the regulatory requirements of a hazardous waste contingency plan. The plan did not include the emergency equipment list, the emergency coordinator information, and arrangements and services agreed to by emergency response agencies. The plan also did not include emergency response specific to a hazardous waste release in the 90-day accumulation area.

**XIII.**

The Division inspector found that facility personnel have not received hazardous waste training relevant to the positions in which they are employed. The environmental coordinator had received hazardous waste training.

**XIV.**

The Division inspector found that the facility does not have records documenting hazardous waste management positions, employee names filling the jobs, written job descriptions, or a written description of training and job experience.

**XV.**

The Division inspector found that the facility has not developed a hazardous waste reduction plan.

**XVI.**

On March 1, 2016 the Division issued a Notice of Violation ("NOV") to the Respondent for violations found during the CEI.

**XVII.**

On April 18, 2016 a follow up inspection was performed at the Respondent's facility. Of the eleven violations in the March 1, 2016 NOV, the inspector observed that nine violations had been adequately addressed and that two of the violations regarding solvent wipes were not applicable. In the NOV the Respondent was cited for not labeling containers as "Excluded Solvent-Contaminated Wipes" and for not developing a written description of the process to ensure solvent-contaminated wipes contain no free liquids at the point of transportation. The facility uses isopropyl alcohol and stain that were discarded in the daily trash. Isopropyl alcohol is not an FOO I-F005 listed solvent and according to facility personnel, the used rags are not a characteristic hazardous waste at the point of generation; therefore, based on this information the Division rescinded the violations described in paragraphs VI and VII of this Order in an April 26, 2016 letter.

**XIII.**

On March 11, 2016 the Division sent the Respondent an Opportunity for Show Cause letter, which offered the Respondent an opportunity to schedule a meeting between Division personnel and representatives of the Respondent to discuss the violations found at the facility. The facility did not confirm within five ( 5) days of receipt of this letter that they would or would

not be requesting a Show Cause Meeting. Therefore, as stated in the Opportunity for Show Cause letter, a show cause meeting was not held and the Division will continue with the enforcement process.

**XIV.**

During the course of investigation of the Respondent's facility, the Division has incurred DAMAGES in the amount of THREE HUNDRED AND FOUR DOLLARS AND SEVENTY CENTS (\$304.70).

**VIOLATIONS**

**XV.**

The Respondent failed to label nineteen 55 gallon containers of coating/solvent waste with the words "Hazardous Waste" in the hazardous waste 90 day accumulation area 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 nineteen 55 gallon containers of coating solvent waste with the words "Hazardous Waste" in the hazardous waste 90 day accumulation area the Respondent has violated Rule 0400-12-01-.03(4)(e)2(iii).

## XVI.

The Respondent failed to place accumulation start dates on nineteen 55 gallon containers of coating/solvent waste in the hazardous waste 90 day accumulation area as required by Rule 0400-12-01-.03(4)(e)2(ii).

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

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

By failing to place accumulation start dates on nineteen 55 gallon containers of coating/solvent waste in the hazardous waste 90 day accumulation area the Respondent has violated Rule 0400-12-01-.03(4)(e)2(ii).

## XVII.

The Respondent failed to close three 55 gallon containers of coating/solvent waste in the hazardous waste 90 day accumulation area as required by Rule 0400-12-01-.03(4)(e)5(i)1, which incorporates Rule 0400-12-01-.05(9)(d)1.

Rule 0400-12-01-.03(4)(e)5(i)1 states:

(4) Pre-transport Requirements

(e) Accumulation Time

- (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) Complies with Rule 0400-12-01-.05(9)(b), (c), and (d)1; and

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 failure to close three 55 gallon containers of coating/solvent waste in the hazardous waste 90 day accumulation area the Respondent has failed to comply with Rule 0400-12-01-.03(4)(e)5(i)(I), which incorporates Rule 0400-12-01-.05(9)(d)1.

#### XVIII.

The Respondent failed to properly containerized coating/solvent waste that was on the floor around one of the hazardous waste containers in the hazardous waste 90 day accumulation area as required by Rule 0400-12-01-.03(4)(e)2(i)(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)

By failing to properly containerize coating/solvent waste that was on the floor around one of the hazardous waste containers in the hazardous waste 90 day accumulation area the Respondent has violated Rule 0400-12-01-.03(4)(e)2(i)(I).

#### XIX.

The Respondent failed to provide adequate aisle space between the containers of hazardous waste in the hazardous waste 90 day accumulation area as required by Rule 0400-12-01-.03(4)(e)2(iv) which incorporates Rule 0400-12-01-.05(3)(f).

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(3)(f) states:

(3) Preparedness and Prevention

(f) Required Aisle Space

The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

By failing to provide adequate aisle space between the containers of hazardous waste in the hazardous waste 90 day accumulation area the Respondent has violated Rule 0400-12-01-.03(4)(e)2(iv) which incorporates Rule 0400-12-01-.05(3)(f).

**XX.**

The Respondent failed to have a facility emergency plan that met the regulatory requirements of a hazardous waste contingency plan as required by Rule 0400-12-01-.03(4)(e)2(iv) which incorporates Rule 0400-12-01-.05(4)(c)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)(c)2 states:

- (4) Contingency Plan and Emergency Procedures
  - (c) Content of Contingency Plan
    - 2. If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this paragraph. The owner or operator may develop one contingency plan which meets all regulatory requirements. The Department recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

By failing to have a facility emergency plan that met the regulatory requirements of a hazardous waste contingency plan the Respondent has violated Rule 0400-12-01-.03(4)(e)2(iv) which incorporates Rule 0400-12-01-.05(4)(c)2.

**XXI.**

The Respondent failed to provide facility personnel with hazardous waste training relevant to the positions in which they are employed as required by Rule 0400-12-01-.03(4)(e)2(iv) which incorporates Rule 0400-12-01-.05(2)(g)1(i).

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)1(i) states:

(2) General Facility Standards

(g) Personnel Training

1. (i) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this rule. The owner or operator must ensure that this program includes all the elements described in the document required under subpart 4(iii) of this subparagraph.

By failing to provide facility personnel with hazardous waste training relevant to the positions in which they are employed the Respondent has violated Rule 0400-12-01-.03(4)(e)2(iv) which incorporates Rule 0400-12-01-.05(2)(g)1.(i).

**XXII.**

The Respondent failed to have records documenting hazardous waste management position, employee names filling the jobs, written job descriptions or a written description of training and job experience as required by Rule 0400-12-01-.03(4)(e)2(iv) which incorporates Rules 0400-12-01-.05(2)(g)4(i), (ii), (iii) and (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

Rules 0400-12-01-.05(2)(g)4(i), (ii), (iii) and (iv) state:

(2) General Facility Standards

(g) Personnel Training

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

(i) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job; (ii) A written job description for each position listed under subpart (i) of this part. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(iii) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under subpart (i) of this part;

(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 have records documenting hazardous waste management position, employee names filling the jobs, written job descriptions or a written description of training and job experience the Respondent has violated Rule 0400-12-01-.03(4)(e)2(iv) which incorporates Rules 0400-12-01-.05(2)(g)4(i), (ii), (iii) and (iv).

### XXIII.

The Respondent failed to develop a hazardous waste reduction plan as required by Rule 0400-12-01-.03(6)(a)1.

Rule 0400-12-01-.03(6)(a)1 states:

(6) Hazardous Waste Reduction Plan

(a) Applicability

1. Except for generators who are conditionally exempt small quantity generators, as determined by subparagraph (1)(e) of Rule 0400-12-01-.02, and who maintain the exemption for all twelve months of the calendar year, all generators shall complete a hazardous waste reduction plan in accordance with the requirements of subparagraph (b) of this paragraph. After completion of a plan, the generator shall maintain a current copy of the plan at the generating facility. The plan and the annual progress reports under subparagraph (c) of this paragraph shall be made available, upon request, to a representative of the department at any reasonable time. The department may make use of the information as it deems necessary to carry out its duties under this rule.

By failing to develop a hazardous waste reduction plan the Respondent has violated Rule 0400-12-01-.03(6)(a)1.

### XXIV.

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 has violated Tenn. Code Ann. § 68-212-105(4).

**ORDER AND ASSESSMENT**

**XXV.**

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 68-212-111 and 68-212-114, the Commissioner orders, and the Respondent agrees, as follows:

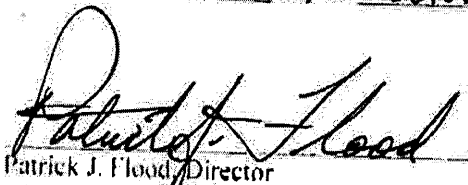
1. The Respondent is hereby assessed DAMAGES in the amount of **THREE HUNDRED AND FOUR DOLLARS AND SEVENTY CENTS (\$304.70)** to be paid to the State within thirty (30) days of execution of this Settlement Agreement and Order.
2. The Respondent is hereby assessed a CIVIL PENALTY in the amount of **SEVENTEEN THOUSAND DOLLARS (\$17,000.00)** to be paid to the State within thirty (30) days of execution of this Settlement Agreement and Order.

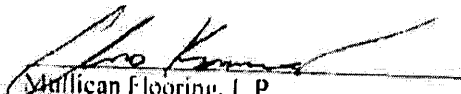
All payments shall be made payable to "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 10th Floor Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243.


XXVI.

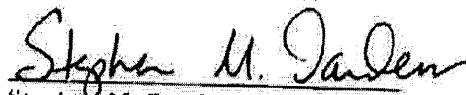
This Settlement Agreement and Order is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. The Parties agree that this Settlement Agreement and Order is a fair and reasonable resolution of this case.

Issued by the Director of the Division of Solid Waste Management and agreed to by the Respondent on this 27<sup>th</sup> day of October, 2016.

  
Patrick J. Flood, Director  
Division of Solid Waste Management  
Tennessee Department of Environment and Conservation

  
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