

**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>SHERMAN + REILLY, INC.</b>	)	
<b>TND 00-333-5114</b>	)	
	)	<b>CASE NO. HWM 16-0021</b>
<b>RESPONDENT</b>	)	
	)	

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**DIRECTOR'S ORDER AND ASSESSMENT**

**PARTIES**

**I.**

Robert J. Martineau, Jr., is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (the "Department") and, among other duties and responsibilities, he is charged with the responsibility for administering and enforcing Tennessee Code Annotated ("Tenn. Code Ann.") § 68-212-101 *et seq.*, the *Tennessee Hazardous Waste Management Act*, and Tenn. Code Ann. § 68-211-1001 *et seq.*, the *Used Oil Collection Act*, (together the "Acts"). Patrick J. Flood is the duly appointed Director of the Division of Solid Waste Management (the "Division" or "DSWM"). He has received written delegation from the Commissioner to administer and enforce the Acts.

**II.**

Sherman + Reilly, Inc., (the "Respondent") is a domestic corporation properly registered to conduct business in the state of Tennessee. Its agent for service of process is C T Corporation System, Suite 2021, 800 South Gay Street, Knoxville, TN 37929-9710. The Respondent is a

manufacturer of tools and equipment trailers for the aerial and underground electrical power transmission and distribution industries at its facility (“the facility”) located at 400 West 33<sup>rd</sup> Street, Chattanooga, TN. The Respondent is a Small Quantity Generator (SQG) of hazardous waste, Small Quantity Handler (SQH) of universal waste, and a Used Oil Generator. The facility has an EPA installation identification number of TND 00-333-5114.

### **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 by Tenn. Code Ann. §§ 68-212-111 and 68-211-1012 to issue an order for correction to the responsible party. Further, the Commissioner or his representative is authorized by Tenn. Code Ann. §§ 68-212-114 and 68-211-1012 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. Rules governing hazardous waste and used oil management have been promulgated pursuant to Tenn. Code Ann. § 68-212-107 and are effective as the Tenn. Comp. R. & Regs. 0400-12-01 through 0400-12-02 (the “Rules”).

#### **IV.**

The Respondent is a “person” within the meaning of 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 by Tenn. Code Ann. § 68-212-107 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. 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**

#### **The April 27, 2016 Compliance Evaluation Inspection**

#### **VI.**

On April 27, 2016, Division personnel from the Chattanooga Environmental Field Office (“CHEFO”) conducted a Compliance Evaluation Inspection (“CEI”) at the facility. The Division inspector observed an open funnel on one 55 gallon satellite accumulation container of hazardous paint solvent waste in the wash bay adjacent to the paint booth area of the Manufacturing Building. Because the funnel was not closed, the container itself was not closed. (Facility personnel closed the funnel on the drum during the CEI.)

#### **VII.**

The Division inspector observed two 55 gallon satellite accumulation containers of hazardous paint solvent waste in the in the wash bay area. Both drums were labeled, but neither was marked with an accumulation start date, and the total amount of waste accumulated exceeded the 55 gallon limit for satellite accumulation areas. (Facility personnel moved one container to the 180 Day hazardous waste storage area during the CEI, reducing the amount of waste in the satellite accumulation area.)

### **VIII.**

The Division inspector observed two 55 gallon satellite accumulation area containers of hazardous waste paint aerosol can residue. One container was located in the Manufacturing Building Assembly area and the second container was located in the Small Parts Manufacturing Building Warehouse area. Neither container was labeled to identify the contents. (Facility personnel labeled both containers during the CEI.)

### **IX.**

The Division inspector observed that the generation of the hazardous waste paint aerosol waste stream began on April 22, 2015. At the time of the CEI, the facility had not made the required notification to the Division of the generation of a new waste stream. (On May 23, 2016, the Respondent submitted a copy of the Waste Stream Notification and proof of fees paid.)

### **X.**

The Division inspector observed that emergency contact information was not posted in the 180 day hazardous waste storage area. (Facility personnel posted the emergency contact information during the CEI.)

### **XI.**

The Division inspector observed that none of the hazardous waste accumulation area weekly inspection records included the time of the inspection. Additionally, the Respondent could not provide weekly inspection records from September 10, 2014, through January 6, 2015. (On July 14, 2016, the Respondent submitted a copy of an amended inspection form that includes a space for recording the time of the inspection.)

## **XII.**

The Division inspector observed that numerous inspections of the hazardous waste accumulation area had not been conducted within seven days of the previous inspection dates. Additionally, the Respondent admitted that inspections of the hazardous waste accumulation area had not been conducted from July 16, 2015, through January 27, 2016. (On July 14, 2016, the Respondent submitted a response indicating that weekly reminders had been established in the work calendar of the facility waste coordinator.)

## **XIII.**

On June 24, 2016, the Division sent the Respondent an Opportunity for Show Cause letter, which offered an opportunity to schedule a meeting between Division personnel and representatives of the Respondent to discuss the violations found at the facility. On July 12, 2016, the Respondent informed the Division that a written response to the violations would be submitted in lieu of seeking a Show Cause meeting. That response was submitted on July 14, 2016.

## **XIV.**

During the course of investigation of the Respondent's facility, the Division has incurred DAMAGES in the amount of TWO THOUSAND NINE HUNDRED TWENTY FIVE DOLLARS AND NO CENTS (\$2,925.00).

## **VIOLATIONS**

## **XV.**

The Respondent failed to close one 55 gallon satellite container of paint solvent waste located in the wash bay adjacent to the paint area, as required by Rule 0400-12-01-.03(4)(e)5.(i)(I), which incorporates Rule 0400-12-01-.05(9)(d)1.

Rule 0400-12-01-.03(4)(e)5.(i)(I) 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) Complies with Rule 0400-12-01-.05(9)(b), (c), and (d)1;

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 one 55 gallon satellite container of hazardous paint solvent waste, the Respondent has violated Rule 0400-12-01-.03(4)(e)5.(i)(I), which incorporates Rule 0400-12-01-.05(9)(d)1.

**XVI.**

The Respondent failed to provide an accumulation start date for hazardous paint solvent waste in excess of 55 gallons stored in a satellite accumulation area, as required by Rule 0400-12-01-.03(4)(e)5.(ii), which states:

(4) Pre-transport Requirements

(e) Accumulation Time

5. (ii) A generator who accumulates either hazardous waste or acute hazardous waste listed in Rule 0400-12-01-.02(4)(b) or (4)(d)5 in excess of the amount established in subpart (i) of this part at or

near any point of generation must, with respect to that amount of excess waste, comply within three days with part 2 of this subparagraph or other applicable provisions of this Chapter. During the three day period the generator must continue to comply with items (i)(I) and (II) of this part. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

By failing to provide an accumulation start date for hazardous paint solvent waste in excess of 55 gallons stored in a satellite accumulation area, the Respondent has violated Rule 0400-12-01-.03(4)(e)5.(ii).

## XVII.

The Respondent failed to label two 55 gallon satellite containers of hazardous waste paint aerosol can residue to identify contents, as required by Rule 0400-12-01-.03(4)(e)5.(i)(II) which 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:

(II) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

By failing to label two 55 gallon satellite containers of hazardous waste paint aerosol can residue to identify contents, the Respondent has violated Rule 0400-12-01-.03(4)(e)5.(i)(II).

## XVIII.

The Respondent failed to submit notification of the generation of a waste stream for hazardous waste paint aerosol can residue, as required by Rule 0400-12-01-.03(2)(a)1. and (c) which states:

(2) Notification

(a) Applicability

1. Each person who generates a hazardous waste as defined in Rule 0400 12-01-.02(1)(c) must notify the Department, describing his wastes and his activities regarding them, according to subparagraphs (b) through (e) of this paragraph, except as parts 2, 3, and 4 of this subparagraph and Rules 0400-12-01-.02(1)(d)1, 2, 4, 5, and 7, (e) and (g) provide otherwise.

(c) New Generators

Except as subparagraphs (a) and (e) of this paragraph provide otherwise, a person who becomes a generator of a waste after the effective date of regulations established under Rule 0400-12-01-.02 which identify that waste as a hazardous waste subject to the requirements of this paragraph, must notify the Department within 90 days after the date of initial generation. Such notification must be submitted on generator notification forms provided by the Department. The form must be completed according to the instructions accompanying it.

By failing to submit notification of the generation of a waste stream for hazardous waste paint aerosol can residue, the Respondent has violated Rule 0400-12-01-.03(2)(a)1. and (c).

## XIX.

The Respondent failed to post emergency contact information in the 180 day hazardous waste storage area, as required by Rule 0400-12-01-.03(4)(e)6.(vii)(II) which 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.

By failing to post emergency contact information in the 180 day hazardous waste storage area, the Respondent has violated Rule 0400-12-01-.03(4)(e)6.(vii)(II).

**XX.**

The Respondent failed to provide weekly inspection records of the 180 day hazardous waste storage area, as required by 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;

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 provide weekly inspection records of the 180 day hazardous waste storage area, the Respondent has violated Rule 0400-12-01-.03(4)(e)6.(vi) which incorporates Rule 0400-12-01-.05(2)(f)4.

**XXI.**

The Respondent failed to conduct consistent weekly inspections of the 180 day area, as required by 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.

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

**XXII.**

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**

**XXIII.**

WHEREFORE, PREMISES CONSIDERED, pursuant to the authority vested by Tenn. Code Ann. §§ 68-212-111 and 68-212-114, I, Patrick J. Flood, after proper consideration of the harm done to the public health or the environment, the economic benefit gained by the Respondent, the amount of effort put forth by the Respondent to attain compliance, and any unusual or extraordinary costs incurred by the Commissioner, hereby issue the following ORDER AND ASSESSMENT:

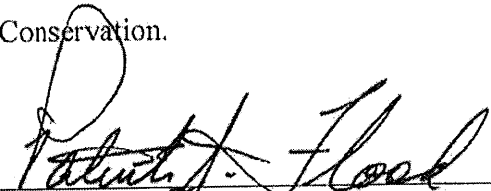
1. The Respondent is hereby assessed DAMAGES in the amount of TWO THOUSAND NINE HUNDRED TWENTY FIVE DOLLARS AND NO CENTS (\$2,925.00) to be paid to the State on or before the 31st day after receipt of this ORDER AND ASSESSMENT.

2. The Respondent is hereby assessed a CIVIL PENALTY in the amount of FOUR THOUSAND SIX HUNDRED AND TWENTY DOLLARS AND NO CENTS (\$4,620.00) 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 should reference Case NO. HWM16-0021, be made payable to "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services, Consolidated Fees Section, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10<sup>th</sup> Floor, Nashville, Tennessee 37243.
4. Failure to comply with any of the requirements of this order could lead to further enforcement actions which may include additional civil penalties, assessment of damages, and recovery of costs.

### 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 the Respondent for liability for costs, expenditures, civil penalties and/or damages incurred by the State. The right to order further corrective action and to pursue further enforcement action is also specifically reserved. Compliance with this ORDER AND ASSESSMENT will be considered as a mitigating factor in determining the need for future enforcement action(s).

Issued this 9<sup>th</sup> day of August, 2016, in the Office of the Director of the Division of Solid Waste Management, Tennessee Department of Environment and Conservation.

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

## NOTICE OF RIGHTS

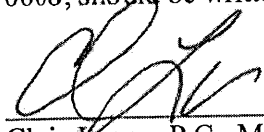
Tennessee Code Annotated (“Tenn. Code Ann.”) §§ 68-212-113 and 68-212-114 allow the Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Commissioner within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or this Order and Assessment become final (not subject to review).

If an appeal is filed, an initial hearing of this 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 *et seq.* (the Uniform Administrative Procedures Act), and Rule 1360-04-01 *et seq.* (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. This includes the authority to modify (decrease or increase) the penalty within the statutory confines of Tenn. Code Ann. § 68-212-114 (from \$1 to \$50,000 per day per violation). 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 (appeal) must be directed to the Commissioner of the Tennessee Department of Environment and Conservation, c/o Jenny Howard, General Counsel, Department of Environment and Conservation, 2<sup>nd</sup> Floor William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243-1548. Payments of the civil penalty and/or damages 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, 10<sup>th</sup> Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Chris Lagan, State of Tennessee, Division of Solid and Hazardous Waste Management, 14<sup>th</sup> Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, TN 37243. The case number, HWM16-0008, should be written on all correspondence regarding this matter.



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Chris Lagan, P.G., Manager  
Enforcement Section  
Division of Solid Waste Management  
Tennessee Department of Environment and Conservation