

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

IN THE MATTER OF:)	DIVISION OF SOLID WASTE
)	MANAGEMENT
VELSICOL CHEMICAL LLC)	
TND 00-702-4664)	
)	CASE NO. HWM 16-0050
RESPONDENT)	
)	

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.

Velsicol Chemical, LLC (the "Respondent") is a foreign (Delaware) limited liability company 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 produced a variety of industrial grade chemical compounds beginning in 1942 at its facility (“the facility”) located at 1199 Warford Street, Memphis, TN. The Respondent is conditionally exempt small quantity generator (CESQG) of hazardous waste. The facility is currently operating under Hazardous Waste Management Facility Permit TNHW-158 (TNHW-158) and has an EPA installation identification number of TND 00-702-4664.

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 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

July 28, 2016, and July 29, 2016, Compliance Evaluation Inspection

VI.

On July 28, 2016, and July 29, 2016, Division personnel conducted a Compliance Evaluation Inspection (CEI) consisting of a facility inspection and a records review. The Respondent produced a variety of industrial grade chemical compounds at the facility beginning in 1942. Production ceased in 2011 and the process units, storage tanks, and a hazardous waste incinerator have been demolished. The facility currently consists of a corrective action treatment facility (CATF) for the treatment of contaminated groundwater, a soil consolidation area for the onsite storage of contaminated soils, a maintenance shop, an unused laboratory, and several warehouses for lease. The facility operated as a large quantity generator (LQG) of hazardous waste from January to November of 2015 due to demolition and remediation activities, but it was operating as a conditionally exempt small quantity generator (CESQG) during the CEI. During the facility inspection portion of the CEI, the Division inspector observed the following in Warehouse #6, which serves as the facility's designated hazardous waste storage area:

- One closed, inverted, unlabeled, 55-gallon drum.
- One pallet with seven shrink-wrapped, unlabeled 10-gallon buckets.

- One pallet with four unlabeled 15-gallon containers and one unlabeled 10-gallon bucket of smaller containers.
- One pallet of four shrink-wrapped boxes containing unlabeled, smaller containers.

Facility personnel were unable to identify the contents of these containers and stated that the containers may have been left by a former tenant or may have been discovered during the demolition of the various buildings on site.

VII.

The Division inspector reviewed weekly inspection records of the hazardous waste storage area which indicated that three drums of hazardous waste had been stored from December 22, 2014, to November 17, 2015 (330 days). These drums were generated during the period the facility operated as a LQG. (These drums had been shipped off-site prior to the CEI.)

VIII.

The Division inspector observed that the southwest sections of the security fence were overgrown by trees and weeds such that the condition of the fence, therefore the security of the site, could not be verified as required by Respondent's permit TNHW-158.

IX.

On August 26, 2016, the Division issued a Notice of Violation (NOV) to the Respondent for the violations cited during the July 28, 2016, and July 29, 2016, CEI. The Respondent was also advised to notify the Division of any incorrect or incomplete information in the CEI.

X.

On September 23, 2016, the Respondent submitted a letter documenting the corrective measures taken to address the violations cited in the August 26, 2016, NOV. The Respondent

pointed out that the facility was operating as a Small Quantity Generator (SQG) of hazardous waste in December of 2014 when the three drums of hazardous waste referenced in the weekly inspection records were generated. The Respondent stated that most of the materials noted in Warehouse #6 had been identified as usable materials and products, not waste. However, the pallet of boxes containing unlabeled, smaller containers had been identified as laboratory chemicals and had been consolidated with other laboratory chemicals for disposal. The Respondent stated that the fence would be sprayed to eliminate vegetation during the spring growing season. On September 28, 2016, the Respondent submitted documentation of the complete removal and disposal of all the laboratory chemicals.

XI.

On October 3, 2016, the Division sent the Respondent a letter correcting the citation language regarding the storage of the three drums cited in the August 26, 2016, NOV.

XII.

On December 21, 2016, the Division conducted a Show Cause meeting with representatives of the Respondent. The Respondent's representatives provided an update on the ongoing demolition of the facility and the clean-up of the security fence. The Respondent's representatives also stated that the volume of inventory in Warehouse #6 had been reduced by approximately two thirds over the 2016 calendar year. Therefore, the Respondent's representatives were able to provide information on changes that should prevent recurrence of the violations and mitigate, but not preclude, enforcement action against the Respondent.

XIII.

During the course of investigation of the Respondent's facility, the Division has incurred DAMAGES in the amount of TWO THOUSAND FOUR HUNDRED SIXTY FOUR DOLLARS AND FOURTEEN CENTS (\$2,464.14)

VIOLATIONS

XIV.

The Respondent failed to conduct hazardous waste determinations, as required by Rule 0400-12-01-.03(1)(b), which 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 supercede any applicable exclusion from recordkeeping, notification, or reporting requirements for hazardous waste otherwise specified in this rule.)

By failing to conduct hazardous waste determinations, the Respondent has violated Rule 0400-12-01-.03(1)(b).

XV.

The Respondent stored hazardous waste on site for greater than 180 days without either obtaining a permit or requesting an extension, as required by Rule 0400-12-01-.03(4)(e)8., which states:

- (4) Pre-transport Requirements
 - (e) Accumulation Time

8. A small quantity generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of Rule 0400-12-01-.05, 0400-12-01-.06, and 0400-12-01-.07 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the Department if hazardous waste must remain on-site for longer than 180 days (or 270 days if applicable) 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.

By storing hazardous waste for greater than 180 days without obtaining an extension, the Respondent was storing hazardous waste without a permit.

XVI.

The Respondent failed to provide adequate security at the site, as required by Permit TNHW-158, which states:

Attachment 2. Security:

The permittee shall provide security for the site by maintaining, in good condition, a combination of fences, building walls, access controls, and signage.

By failing to provide adequate security at the site, the Respondent has violated the terms of Permit TNHW-158.

XVII.

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

XVIII.

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 FOUR HUNDRED SIXTY FOUR DOLLARS AND FOURTEEN CENTS (\$2,464.14) to be paid to the State on or before the thirty-first (31st) day after receipt of this ORDER and ASSESSMENT.
2. The Respondent is hereby assessed a CIVIL PENALTY in the amount of ELEVEN THOUSAND FIVE HUNDRED FIFTY DOLLARS AND NO CENTS (\$11,550.00) to be paid to the State on or before the thirty-first (31st) day after receipt of this ORDER and ASSESSMENT.
3. Payment of the DAMAGES and CIVIL PENALTY should reference Case NO. HWM16-0050, 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, 10th 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).

NOTICE OF RIGHTS

Tennessee Code Annotated (“Tenn. Code Ann.”) § 68-212-215, allows the Respondent to secure review (appeal) of 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 will 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 Tenn. Comp. R. & Regs. 1360-04-01 *et seq.* (the Department of State’s Uniform Rules of

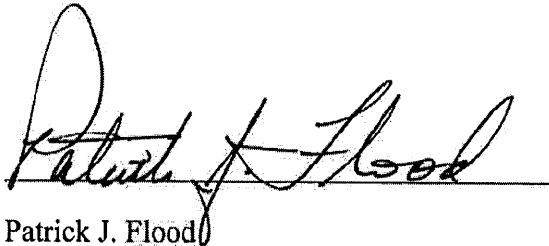
Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. **Artificial Respondents (corporations, limited 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 limits of Tenn. Code Ann. § 68-212-114 (up 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 Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. 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, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Christopher Lagan, State of Tennessee, Division of Solid and Hazardous Waste

Management, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 14th Floor, Nashville, TN 37243. Attorneys should contact the undersigned counsel of record. **The case number, HWM16-0050, 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 6th day of FEBRUARY, 2017.



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

Reviewed by:



Ellery R. Richardson
BPR # 32337
Assistant General Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
PHONE: (615) 532-0128
EMAIL: Ellery.R.Richardson@tn.gov