

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

IN THE MATTER OF:)	
)	
ENVIRONMENTAL DIMENSIONS, INC.)	DIVISION OF
)	RADIOLOGICAL HEALTH
RESPONDENT)	
)	CASE NO. DRH18-0004

ORDER AND ASSESSMENT OF CIVIL PENALTY

Now comes David W. Salyers, P.E., Commissioner of the Tennessee Department of Environment and Conservation (the “Commissioner”) and states:

PARTIES

I.

David W. Salyers, P.E., 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 the Tennessee Radiological Health Services Act (the “Act”) which is codified at Tennessee Code Annotated (“Tenn. Code Ann.”) sections 68-202-201 through 68-202-417.

II.

Environmental Dimensions, Inc. (the “Respondent”) is a foreign corporation created in the State of New Mexico. The Respondent’s registration to conduct business in the State of Tennessee was revoked by the Secretary of State on June 12, 2016. Service of process may be made on the Respondent through its registered agent, Rebecca Ford at 110 Kingsley Rd., Oak Ridge, Tennessee 37830-5433.

JURISDICTION

III.

Tenn. Code Ann. § 68-202-214 authorizes the Commissioner to issue orders of correction to any person who violates any provision of the Act or any rule promulgated thereunder Tenn. Code Ann. § 68-202-212 authorizes the Commissioner to assess civil penalties of up to \$5,000 per day per violation upon any person who violates any provision of the Act or any rule, regulation, or standard adopted pursuant to the Act.

IV.

The Respondent is a person as defined in Tenn. Code Ann. § 68-202-202(4) and has violated the Act as hereinafter stated. Rules governing radiological health services have been promulgated pursuant to Tenn. Code Ann. § 68-202-206(a) and are effective as Tenn. Comp. R. & Regs. 0400-20-04 (the "Rules").

FACTS

V.

On or about November 17, 2006, the Division received an application for a Radioactive Material License from the Respondent.

VI.

On or about March 7, 2007, the Division issued Radioactive Material License R-01103 ("License") to Respondent, which enables the Respondent to possess radioactive material incident to storage, handling, decontamination, radiological surveys for free release/unrestricted use of potentially contaminated equipment, containers and materials, characterization assessment of waste, packaging of waste within containers and laboratory testing of samples. The License was re-issued on January 1, 2017, with an expiration date of March 31, 2018. The License further provides that the authorized place of storage (the "facility") is at East Tennessee Technology Park, Bldg. K-1310-MP, 930 Perimeter Park Rd., Oak Ridge, TN 37830.

VII.

On April 25, 2018, the Division conducted an inspection at the Respondent's facility.

VIII.

During the April 2018 inspection, the inspector observed that the License had expired on March 31, 2018, and that there had been no efforts made to renew the License. Item four of the License specifies the expiration date as March 31, 2018. Rule 0400-20-10-.17(1) states, in part, that each specific license shall expire at the end of the day, in the month and year stated therein.

IX.

During the April 2018 inspection, the inspector observed that no one was present at the address specified in the license and that the facility appeared to have been vacated. Rule 0400-20-05-.152 requires each licensee to notify the Division in writing of intent to vacate no less than 30 days before vacating.

X.

A notice of non-compliance was issued to the Respondent on April 30, 2018, based on findings from this inspection.

XI.

On May 24, 2018, the Respondent provided a response detailing the corrective actions it had taken to correct the violations. However, this response did not correct either of these violations nor did it provide actions that would be taken to prevent recurrence.

XII.

On October 18, 2018, the Division conducted an inspection at the Respondent's licensed address.

XIII.

At the time of the October 2018 inspection, efforts to renew the expired License had not been successful.

XIV.

During the October 2018 inspection, the inspector observed that certain specific decontamination milestones had not been met.

Condition 22 of the License via commitments made in the letter dated August 27, 2015, required the Respondent to meet the following specific decontamination milestones.

Permacon:

- a) Complete Decon work by November 11, 2016.
- b) Submit survey to TDEC by January 20, 2017.

Orex:

- a) Conduct scoping surveys by December 29, 2016.
- b) Submit Decon Plan to TDEC by May 12, 2017.
- c) Conduct Decon Work by November 17, 2017.

XV.

On October 10, 2018, the Respondent attended a show cause meeting with Division staff. However, Respondent did not provide any additional information that would permit the Division to issue a License.

XVI.

A notice of non-compliance was issued to the Respondent on October 18, 2018, based on findings from the October 2018 inspection.

XVII.

On November 16, 2018, the Respondent provided a response detailing the facility's disposition. The Respondent stated it had no further interest in the radioactive waste management market and intends to either lease or sell the facility to another party conducting work in the radioactive waste market, or decommission the facility and sell the property for some other industrial use. The Respondent proposed that it would apply for a Radioactive Materials Storage License to allow the necessary time to pursue one of the aforementioned options. However, to date, the Respondent has failed to provide sufficient information to meet the minimum requirements for issuance of a License.

VIOLATIONS

XVIII.

By failing to timely renew Radioactive Material License R-01103, the Respondent violated Rule 0400-20-10-.02 which states as follows:

Except as otherwise specifically provided, no person shall manufacture, produce, receive, possess, use, transfer, own, or acquire radioactive material unless authorized in a specific or general license issued pursuant to this chapter.

XIX.

By failing to meet the decontamination milestones required under Condition 22 of Radioactive Material License R-01103, the Respondent violated Tenn. Code Ann. § 68-202-212(b), which states as follows:

Any person who violates or fails to comply with any provision of this part, any order issued in accordance with this part, or any rule, regulation or standard adopted pursuant to this part, or who fails to pay a lawfully levied fee is subject to a civil penalty of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000) per day for each violation.

ORDER AND ASSESSMENT

XX.

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 68-202-212 and 68-202-214, I, David W. Salyers, P.E., Commissioner, hereby issue the following **ORDER AND ASSESSMENT** to the Respondent:

1. In accordance with Rule 0400-20-10-.18, the Department hereby requires Respondent to provide specific milestones commitments for decontamination of the facility.
2. Respondent is assessed a **CIVIL PENALTY** in the amount of **SEVENTY-SIX THOUSAND FIVE-HUNDRED (\$76,500)** for the violations of the Act and Rules, as discussed herein.
3. The facility shall be decontaminated, within 9 months, sufficient to be free released to the public using the NRC-Multi-Agency Radiation Survey and Site Investigation (MARSSIM) or equivalent methodology.
4. In lieu of Item 3, in accordance with Rule 0400-20-10-.12(4), Respondent can provide financial assurance sufficient to bond all areas of the facility that are contaminated with radioactive material.
5. If Respondent fails to adhere to item 3 or 4 of this paragraph, then the **CIVIL PENALTY** shall be due and Respondent shall pay the assessed **CIVIL PENALTY** in full to the "Treasurer, State of Tennessee" as detailed in the Notice of Rights. The case number, **DRH18-0004**, should be clearly shown on the check or money order to ensure that the payment is properly credited. Payment shall be made on or before the thirty-first (31st) day after receipt of this **ORDER AND ASSESSMENT**.

Respondent is hereby advised that the Commissioner does not expressly or implicitly waive his authority pursuant to any provision of the Act, Rules, or any other law or remedy available to the State of Tennessee by 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). 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/or recovery of costs.

NOTICE OF RIGHTS

Tenn. Code Ann. §§ 68-202-212 and 68-202-214, allow 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 Technical Secretary within THIRTY (30) DAYS of the date Respondent received this Order and Assessment or this Order and Assessment becomes final (not subject to review).

If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. §§ 68-202-212(c), 68-202-214(b), and 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.


Any petition for review (appeal) must be directed to the Technical Secretary, Tennessee Division of Radiological Health, 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 Attn: Billy Freeman, Division of Radiological Health, 3711 Middlebrook Pike, Knoxville, TN 37921, or via e-mail to Billy.Freeman@tn.gov. Attorneys should contact the undersigned counsel of record. **The case number, DRH18-0004, should be written on all correspondence regarding this matter.**

Issued by the Commissioner of the Department of Environment and Conservation, on this 5th day of March, 2019.


David W. Salyers, P.E., Commissioner
Department of Environment & Conservation

Reviewed by:


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