

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

IN THE MATTER OF:)	DIVISION OF SOLID WASTE
)	MANAGEMENT
METHODIST HEALTHCARE -)	
MEMPHIS HOSPITALS)	
)	
RESPONDENT)	CASE NO. HWM 20-0008

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Lisa A. Hughey, CHMM, 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 (the "Department") and is charged with the responsibility for administering and enforcing the Tennessee Hazardous Waste Management Act, the Tennessee Solid Waste Disposal Act, Tennessee Code Annotated sections 68-211-101 to 68-212-312, and the Used Oil Collection Act, Tennessee Code Annotated 68-211-1001 (the "Acts"). Lisa Hughey is the duly appointed Director of the Division of Solid Waste Management (the "Division"). She has received written delegation from the Commissioner to administer and enforce the Acts.

II.

Methodist Healthcare – Memphis Hospitals (the "Respondent") is a domestic nonprofit corporation properly registered to conduct business in the State of Tennessee. Its agent for service of process is Monica N. Wharton, Suite 700, 1211 Union Avenue, Memphis, TN 38104-6600. The

Respondent formally conducts business as “Le Bonheur Children’s Medical Center” and is the Memphis region’s comprehensive pediatric hospital (“Le Bonheur” or the “facility”), offering a wide range of medical assistance from acute medicine to surgical care for children. The hospital is located at 50 N. Dunlap Street, Memphis, TN 38103. The facility has an EPA installation identification number of TND 07-351-7542.

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 to issue an order for correction to the responsible party. Tenn. Code Ann. §§ 68-212-111 and 68-211-112. 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 68-211-112. 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 (the “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 Act, 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. 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 Act.

FACTS

The January 28, 2020 Compliance Evaluation Inspection

VI.

On January 28, 2020, Division personnel conducted an unannounced Compliance Evaluation Inspection (“CEI”) consisting of a facility records review and walk-through of areas related to the management of hazardous waste, universal waste, and used oil. The facility began operations in June 1952 and is comprised of multiple buildings. It is designated by the American College of Surgeons as a Level 1 Trauma Center.

At the time of the CEI, the Respondent was determined to be operating as a small quantity generator (SQG) of hazardous waste. In addition, the Respondent was determined to be a large quantity generator (LQG) of hazardous waste in 2017, 2018, and 2019 based on hazardous waste records reviewed during the CEI. Hazardous waste is generated at the facility primarily from discarded P-listed acute hazardous waste and hospital maintenance work. At the time of the CEI, the Respondent had nine active hazardous waste streams. The walk-through portion of the CEI consisted of one 180-day central storage area for hazardous waste, 45 satellite accumulation areas throughout the various floors of the hospital, and two rooms containing universal wastes.

VII.

During the inspection of the rooms containing universal waste, the Division inspector observed approximately 27 universal waste batteries that were not labeled properly.

VIII.

The Division inspector also observed one 55-gallon container of universal waste lamps and one 4-foot container of universal waste lamps in the light bulb room that were not closed. The 55-gallon container was immediately closed by facility staff during the CEI.

IX.

The Division inspector observed one 20-gallon container of hazardous waste in a satellite accumulation area (SAA) within the Outpatient pharmacy that was not labeled properly. Facility staff properly labeled this container during the CEI.

X.

The Division inspector observed eight open containers of hazardous waste located at pharmaceutical SAA's throughout the hospital. Facility personnel immediately closed the eight containers during the CEI.

XI.

The Division inspector observed that the facility did not have adequate aisle space to readily access containers of hazardous waste at the 180-day hazardous waste storage area. Facility personnel immediately removed the containers blocking access in order to adequately inspect containers of hazardous stored in this 180-day area.

XII.

The Division inspector observed one 5-gallon container of hazardous waste within the 180-day hazardous waste storage area that did not have an accumulation start date. Facility personnel marked this container with an accumulation start date of January 13, 2020, during the CEI.

XIII.

The Division inspector observed that for 2017 through 2019 as a LQG, and at the time of the CEI as a SQG, there were no hazardous waste weekly inspection records available for review.

XIV.

The Division inspector observed that the facility's contingency plan that was completed for the facility when it was an LQG lacked the required elements of a list of emergency equipment, evacuation map, and the home address of the emergency coordinator. The Division inspector also noted that facility personnel did not know if the facility's contingency plan had been submitted to local authorities; furthermore, there was no documentation of this submission.

XV.

The Division inspector noted that the Respondent did not possess a copy of its 2017 and 2018 Annual Reports onsite. Furthermore, the Respondent had not addressed a Notice of Deficiency (NOD) from the Division's Waste Activity Audit Section that was issued on July 9, 2019 for the Respondent's 2017 and 2018 Annual Reports.

XVI.

The Division inspector also observed that the facility had not maintained any uniform hazardous waste manifests onsite for shipments that occurred in 2017.

XVII.

On February 17, 2020, facility personnel emailed the Division copies of its 2017 uniform hazardous waste manifests.

XVIII.

On March 13, 2020, the Division issued a Notice of Violation (NOV) to the Respondent.

XIX.

On April 15, 2020, Division staff emailed representatives of the Respondent requesting a response to the March 13, 2020 NOV. On April 16, 2020, the Division received an email from the facility documenting their response to the NOV; however, after review, the Division deemed the response inadequate in addressing the nine outstanding violations. Representatives of the Respondent subsequently agreed to provide an additional response to the cited violations the next day on April 17, 2020.

XX.

On April 17, 2020, the Division received the response to the March 13, 2020 NOV by email. Based upon the Division's review of the records provided, two outstanding violations had been adequately addressed: labeling of universal waste batteries and submission of the facility's contingency plan to local authorities. The two violations regarding the performance of weekly hazardous waste inspections while the Respondent was a LQG and SQG were deemed unresolvable.

The April 20, 2020 Follow-up Inspection

XXI.

On April 20, 2020, the Division formally conducted a hazardous waste follow-up inspection by records review based upon the response documentation received from the Respondent from April 15, 2020 to April 17, 2020. On April 17, 2020, facility personnel provided documentation to the Division indicating that the universal waste lamp containers had been closed and dated appropriately. However, the facility did not provide adequate documentation to the Division to demonstrate that containers of universal waste lamps observed during the CEI in the room containing lamps had been properly closed.

XXII.

With respect to the facility's contingency plan, facility personnel provided documentation to the Division of the home address and phone number of the facility's Emergency Coordinator. However, documentation of an evacuation map and a list of emergency equipment was not provided.

XXIII.

In the response documentation from the Respondent, copies of the 2016 and 2017 Annual Reports were provided and reported to be kept onsite; however, there was no documentation of the 2018 Annual Report. Furthermore, the 2017 and 2018 Annual Reports had not been corrected as they were deemed inadequate by the Division's July 9, 2019 NOD.

XXIV.

On May 8, 2020, the Division issued a second Notice of Violation (NOV) to the Respondent.

XXV.

On May 21, 2020 and May 22, 2020, representatives of the Respondent provided a response to the outstanding violations noted in the second NOV dated May 8, 2020. Upon review by the Division inspector, all outstanding violations had been addressed except for those pertaining to Annual Reports.

XXVI.

On June 4, 2020, the Division issued a Show Cause letter offering the Respondent an opportunity to schedule a Show Cause Meeting to discuss the violations cited in the NOVs, and any mitigating circumstance or efforts to return to compliance in response to the NOVs. Representatives of the Respondent requested a meeting to be held on June 11, 2020.

XXVII.

On June 11, 2020, representatives of the Respondent and Division personnel held a Show Cause Meeting via WebEx to discuss the violations cited in the two NOVs, the corrective actions taken, and any additional information and practices implemented to prevent a recurrence of the violations. The Respondent presented additional information detailing the causes of the violations, the development of protocols and procedures for recordkeeping and inspections, training updates, and operational changes which would prevent a recurrence of the violations. All violations noted in the two NOVs – save for the Annual Reports – were addressed. On the day of the Show Cause Meeting, representatives of the Respondent collaborated with personnel from the Division's Waste Activity Audit Section to address the remaining deficiencies pertaining to Annual Reports.

XXVIII.

On June 16, 2020, the Division issued a letter to the Respondent informing them of a follow-up inspection by records review for all information submitted since the second NOV was issued on May 8, 2020. Based on the Division's review, the violations noted in the Divisions March 13, 2020 NOV and May 8, 2020 NOV were determined to have been corrected.

XXIX.

During the course of the investigation, the Division incurred damages in the amount of \$1,650.00.

VIOLATIONS

XXX.

The Respondent failed to label universal waste batteries as required by Rule 0400-12-01-.12(2)(e)1.

Rule 0400-12-01-.12(2)(e)1 states:

(2) Standards for Small Quantity Handlers of Universal Waste

(e) Labeling/Marking

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

1. Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste - Battery(ies)" or "Waste Battery(ies)" or "Used Battery(ies)."

XXXI.

The Respondent failed to manage universal waste lamps in closed, structurally sound containers adequate to prevent breakage, which is a violation of Rule 0400-12-01-.12(2)(d)4(i)(I).

Rule 0400-12-01-.12(2)(d)4(i)(I) states:

(2) Standards for Small Quantity Handlers of Universal Waste

(d) Waste Management

4. Universal Waste Lamps.

- (i) A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment as follows:

- (I) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

XXXII.

The Respondent failed to properly mark a container of hazardous waste in a satellite accumulation area, which is a violation of Rule 0400-12-01-.03(4)(e)5(i)(II).

Rule 0400-12-01-.03(4)(e)5(i)(II) 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 wither with the words “Hazardous Waste” or with other words that identify the contents of the container.

XXXIII.

The Respondent failed to properly manage and keep closed containers of hazardous waste located in satellite accumulation areas, which is a violation of 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.

XXXIV.

The Respondent failed to maintain adequate aisle space in a hazardous waste storage area, as required by Rule 0400-12-01-03(4)(e)6(vi) which incorporates Rule 0400-12-01-.05(3)(f).

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(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.

XXXV.

The Respondent failed to mark a container of hazardous waste in a 180-day hazardous waste storage area with an accumulation start date, which is a violation of Rule 0400-12-01-.03(4)(e)6(iv)I.

Rule 0400-12-01-.03(4)(e)6(iv)I 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:

(iv) (I) Where containers are used, the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

XXXVI.

The Respondent failed to record weekly inspections of its 180-day hazardous waste storage area as required by Rule 0400-12-01-.03(4)(e)6(ii) which incorporates Rule 0400-12-01-.05(2)(f)(4).

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:

(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.

XXXVII.

The Respondent failed to record weekly inspections of the past 90-day hazardous waste accumulation area as required by Rule 0400-12-01-.03(4)(e)2(iv), which incorporates Rule 0400-12-01-.05(2)(f)4.

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)(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.

XXXVIII.

By failing to submit the facility's contingency plan to local authorities, the Respondent violated Rule 0400-12-01-.03(4)(e)2(iv) which incorporates Rule 0400-12-01-.05(4)(d)(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)(d)(2) states:

(4) Contingency Plan and Emergency Procedures [

(d) Copies of Contingency Plan

2. Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

XXXIX.

The Respondent failed to include the home addresses of the facility's emergency coordinators, a list of emergency equipment, and an evacuation map in the facility's contingency plan, as required by Rule 0400-12-01-.03(4)(e)2(iv) which incorporates Rule 0400-12-01-.05(4)(c)4.

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)1-6 states:

(4) Contingency Plan and Emergency Procedures

(c) Content of Contingency Plan

1. The contingency plan must describe the actions facility personnel must take to comply with subparagraphs (b) and (g) of this paragraph in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.
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.
3. The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to subparagraph (3)(h) of this rule.
4. The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see subparagraph (f) of this paragraph), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator

and others must be listed in the order in which they will assume responsibility as alternates.

5. The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
6. The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

XL.

By failing to keep a copy of each Annual Report for a period of at least three years from the due date of the report (March 1), the Respondent violated Rule 0400-12-01-.03(5)(a)2.

Rule 0400-12-01-.03(5)(a)2 states:

- (5) Recordkeeping and Reporting
 - (a) Recordkeeping
 2. A generator must keep a copy of each Annual Report and Exception Report for a period of at least three years from the due date of the report (March 1).

XLI.

By failing to sufficiently submit hazardous waste Annual Reports, the Respondent violated Rule 0400-12-01-.03(1)(a)3 which references Rule 0400-12-01-.03(5)(b)1.

Rule 0400-12-01-.03(1)(a)3 states:

- (1) General
 - (a) Purpose, Scope, and Applicability

3. A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following portions of this rule with respect to that waste: subparagraph (b) of this paragraph for determining whether or not he has a hazardous waste, paragraph (2) for notifying and subparagraph (c) of this paragraph for obtaining an installation identification number, subparagraph (4)(e) for accumulation of hazardous waste, parts (5)(a)3 and 4 for recordkeeping, subparagraph (5)(b) for annual reporting, and subparagraph (5)(e) for additional reporting; and if applicable, Rule 0400-12-01-.02(1)(d)2(ii)(II) for farmers.

(Note: A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in Rules 0400-12-01-.05, .06, .07, .09 and .10.)

Rule 0400-12-01-.03(5)(b)1 states:

(5) Recordkeeping and Reporting

(b) Annual Reporting

1. A generator must submit an Annual Report to the Department by March 1 for the preceding calendar year. Such report must be submitted on forms provided by the Department, and the form must be completed according to the instructions accompanying it. The report must include, but shall not necessarily be limited to, the following information:
 - (i) The year covered by the report.
 - (ii) The name, address, telephone number, and Department-assigned installation identification number of the generator.
 - (iii) For each hazardous waste stream (i.e., each separate waste but not necessarily each batch or shipment of such waste) generated by the generator during the reporting year, except for those wastes identified in part 4 of this subparagraph, the following information:
 - (I) A descriptive name of the waste and the appropriate waste code(s) from Rule 0400-12-01-.02;
 - (II) The methods by which the waste was managed on-site by the generator during the reporting year and the total quantities managed by each method; and
 - (III) For those wastes managed off-site during the reporting year:

- I. The Installation Identification Number of each treatment, storage, or disposal facility, or the name and address of other places, to which the waste was sent;
 - II. The total quantity of the waste sent to each place and the method(s) by which it was to be managed; and
 - III. The Installation Identification Number(s) of those transporters whose services were used during the reporting year.
- (iv) A summary of the efforts undertaken during the year to reduce volume and toxicity as required on the Tennessee annual report forms.
 - (v) A summary of the changes in volume and toxicity of waste actually achieved during the year as required on the Tennessee annual report forms.
 - (vi) The certification signed by the generator or authorized representative.

XLII.

The Respondent failed to retain uniform hazardous manifests for at least three years which is required by Rule 0400-12-01-.03(5)(a).

Rule 0400-12-01-.03(5)(a) states:

(5) Recordkeeping and Reporting

(a) Recordkeeping [40 CFR 262.40]

1. A generator must keep a copy of each manifest signed in accordance with part (3)(d)1 of this rule for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

ORDER AND ASSESSMENT

XLIII.

Pursuant to the authority vested by sections 68-212-111 and 68-212-117 of the Acts, I, Lisa A. Hughey, hereby issue the following Order and Assessment to the Respondent:

1. The Respondent is hereby assessed damages in the amount of \$1,650 to be paid to the State on or before the 31st day after receipt of this Order.
2. The Respondent is hereby assessed a civil penalty in the amount of \$6,400 to be paid to the State on or before the 31st day after receipt of this Order.
3. Payment of the damages and civil penalty should reference Case No. **HWM 20-0008**, be made payable to “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services – Consolidated Fee Section, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th 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 Act or 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 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 -117. 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 -325 (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, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 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, Snodgrass Tennessee Tower, 312 Rosa 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, HWM20-0008, 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 25th day of November, 2020.



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

Reviewed by:



Denard Mickens (Nov 24, 2020 15:56 CST)

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