



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Division of Solid Waste Management
Davy Crockett Tower, 7th Floor
500 James Robertson Parkway
Nashville, Tennessee 37243

December 16, 2024

Frank S. Lamonica – Registered Agent
124 Cymer Lane
Dayton TN 37322-5211

CERTIFIED MAIL
7006 0810 0001 9167 8974
RETURN RECEIPT REQUESTED

RE: CASE NO. HWM 24-0022

Dear Mr. Lamonica:

Enclosed please find an Order and Assessment issued to Cymer-Dayton, LLC, by the Tennessee Department of Environment and Conservation, Division of Solid Waste Management. Please read it carefully and pay special attention to the NOTICE OF RIGHTS section. In addition to the instructions for payment of any penalties or damages contained in this Order and Assessment, please provide proof of the submittal of the payment to Mark.A.Jordan@tn.gov by email or by mail to the address shown above for the Division's internal documentation.

If you or your attorney have any questions, please contact Mark Jordan by email at Mark.A.Jordan@tn.gov or by phone at 615-532-0675.

Sincerely,

Christopher Lagan

Christopher Lagan (Dec 16, 2024 13:26 CST)

Christopher Lagan, P.G.
Regulatory Compliance and Enforcement Manager

Enclosure

cc: Alan Newman, EPA Region 4, Atlanta, GA
Lisa Hughey, Director, DSWM
Rob Ashe, Deputy Director, Environmental Field Offices, DSWM
Beverly Philpot, Hazardous Waste Program Manager, DSWM
Harry McCann, Chattanooga Environmental Field Office Manager, DSWM
Morgan Beck, Environmental Scientist, DSWM
Records.SWM@tn.gov

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

IN THE MATTER OF:)	DIVISION OF SOLID WASTE
)	MANAGEMENT
CYMER-DAYTON, LLC,)	
)	
TND 98-102-3674,)	CASE NO. HWM 24-0022
)	
RESPONDENT.)	

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Lisa A. Hughey, 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 (Department) and is charged with the responsibility of administering and enforcing the Tennessee Hazardous Waste Management Act of 1977, Tennessee Code Annotated sections 68-212-101 through -121 (Act). Lisa A. Hughey is the duly appointed Director of the Division of Solid Waste Management (Division). She has received written delegation from the Commissioner to administer and enforce the Act.

II.

Cymer-Dayton, LLC (Cymer or Respondent) is a foreign limited liability corporation created in the State of Delaware and is authorized to conduct business in the State of Tennessee. Its agent for service of process is Frank S. Lamonica, 124 Cymer Lane, Decatur, Tennessee 37322-5211.

JURISDICTION

III.

When the Commissioner finds that provisions of the Act are not being carried out, the Commissioner or his representative (Commissioner) is authorized to issue an order for correction to the responsible party. Tenn. Code Ann. § 68-212-111. Further, the Commissioner is authorized to assess damages and civil penalties against any person who violates any provision of the Act, or any rule, regulation, or standard adopted pursuant to the Act. Tenn. Code Ann. § 68-212-114. Rules governing hazardous waste have been promulgated. Tenn. Code Ann. § 68-212-107; Tenn. Comp. R. & Regs. Chapter 0400-12-01-.01 (Rules).

IV.

The Respondent is a "person" under the Act. Tenn. Code Ann. § 68-212-104(14).

V.

For the purpose of enforcing the Act 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(b). 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

VI.

The Respondent conducts specialty organic chemical manufacturing under contract and as toll agreements at its facility (facility) located at 411 Manufacturers Road, Dayton, Tennessee 37321. The facility has reported operating as a large quantity generator of hazardous waste, a used oil generator, and a small quantity handler of universal waste. The facility has an Environmental Protection Agency installation identification number of TND981023674 and has notified the Division of the generation of twelve active hazardous waste streams.

VII.

The May 7, 2024 Compliance Evaluation Inspection

On May 7, 2024, Division personnel conducted a Compliance Evaluation Inspection (CEI), consisting of a facility walk-through of areas related to the generation and management of hazardous waste, used oil and universal waste, and a records review. During the facility walk-through, Division personnel observed the following:

- Maintenance Area: Two of four containers of universal waste lamps were open.
- Central Accumulation Area (CAA):
 - Three 55-gallon drums were stored on a pallet adjacent to, but outside of the CAA in what facility personnel stated was a CAA staging area. One of the drums was not labeled with the words "Hazardous Waste" and was not marked with an indication of the hazards of the contents. The remaining two drums did not have accumulation start dates.
 - Sixty-two 55-gallon drums were in the CAA location. Nine drums did not have accumulation start dates, and eight were not marked with an indication of the hazards of the contents.
 - Located adjacent to the CAA were approximately thirty 250-gallon totes, some of which were leaking. Facility personnel stated that the totes contained fatty acid which were awaiting a process to rework the material. Facility personnel were asked to provide a hazardous waste determination for this material but had not conducted one.

- Drum Storage Pad:
 - Eight 55-gallon drums labeled "ConSeal" were present. Facility personnel stated that this was off-specification material which was being held pending a new buyer.
 - Ten 250-gallon totes were present. Facility personnel stated that the material was overflow from a bulk tank and was awaiting distillation to recover hexanol. Three of the totes were labeled "Hexanol and Water Organic Waste." Facility personnel were asked to provide a hazardous waste determination for this material but had not conducted one.
- Line 1 Tank Farm:
 - Hazardous waste storage tank T-61 did not have all leak interfaces identified.
 - The pump for T-61 had leaked and the material had solidified. Facility personnel could not provide a hazardous waste determination for the material.
- Laboratory:
 - Two 4-liter jars had an attached funnel that was not closed.
 - One 4-liter jar was not labeled with an indication of the hazard of the contents.
 - One small container was not labeled with the words "Hazardous Waste."
 - One 55-gallon drum had an attached funnel that was not closed and a second 55-gallon drum did not have an accumulation start date.
- Building 6:
 - Two satellite accumulation area (SAA) containers were open.
 - Hazardous waste storage tanks R-613, T-60, T-631A, T-632, and T-633 did not have all leak interfaces identified.
- Building 6 Tanker Loading/Unloading:
 - Five 275-gallon totes of process material were present and two of the totes were labeled "T-60 Aqueous Waste". Facility personnel could not provide a hazardous waste determination for this material.
 - Spilled material was observed on the floor of the loading/unloading area. Facility personnel could not provide a hazardous waste determination for this material.
- Tanker Parking Area:
 - One 4,800-gallon tanker of waste organics was not labeled with the words "Hazardous Waste" and did not have an accumulation start date.

- Daily tank inspection records did not include all required elements.
- The facility operating record regarding air emission standards for process vents was incomplete.
- The facility operating record regarding air emission standards for equipment leaks was incomplete.
- The facility operating record regarding air emission standards for tanks was incomplete.

VIII.

On July 10, 2024, the Division sent a Notice of Violation (NOV) to the Respondent, documenting the observations made during the May 7, 2024 CEI. The NOV cited the following Rules violations:

1. Failure to conduct hazardous waste determinations on numerous containers of materials.
2. Failure to appropriately label and close SAA containers of hazardous waste.
3. Failure to close CAA containers.
4. Failure to include all required information in the weekly inspection forms.
5. Failure to properly label and date CAA containers.
6. Failure to provide adequate records documenting 90-day turnover for hazardous waste tanks.
7. Failure to provide locations of water supply and identification of the facility on-site notification systems in the facility quick reference guide.
8. Failure to maintain up-to-date information in the facility contingency plan.
9. Failure to maintain complete and accurate employee training records.
10. Failure to correctly and consistently complete annual waste activity reports.
11. Failure to file manifest exception reports.
12. Failure to provide integrity testing and PE certifications for hazardous waste storage tanks.

- Two hundred and sixty-seven totes of process material were present, some of which were leaking. Facility personnel stated that the material was awaiting distillation to recover usable product. However, facility personnel could not determine how long the material had been stored and could not provide a hazardous waste determination for the material.

During the records review, Division personnel observed the following:

- The facility utilized a mass balance formulation for hazardous waste determinations. The resulting profiles did not meet the required recordkeeping criteria found in Rule 0400-12-01-.03(1)(b)6. Therefore, the facility could not provide hazardous waste determinations for:
 - 30 totes of fatty acid from an acid chloride process located next to the central accumulation area.
 - Ten totes of hexanol and water organic waste located at the drum storage pad.
 - Leaked material at Tank T-61 pump.
 - Five totes of T-60 distillate aqueous waste located at Building 6 tanker loading/unloading.
 - Material on the floor at Building 6 tanker loading/unloading.
 - 267 totes of solvent requiring distillation located at the tanker storage pad.
- Weekly inspections of the CAA did not include the inspector's name on 14 occasions, did not include the inspection time on 10 occasions, and did not identify the labeling issues observed in the main CAA and in the tanker CAA.
- The volume trend analysis used for the facility's hazardous waste storage tanks did not provide sufficient detail to confirm 90-day turnover.
- Hazardous waste training records did not include all required elements.
- The facility could not produce copies of 10 manifests and had not submitted exception reports for those manifests.
- Incorrect waste activity notifications and inconsistent waste codes were noted in the 2023 Annual Report, Offsite Shipping Report, and Waste Stream Report.
- The contingency plan contained incorrect emergency contact information and the quick reference guide did not contain the location of emergency water supplies.
- The facility could not provide integrity testing information and professional engineer (PE) certification statements for the hazardous waste storage tanks.

13. Failure to include all required information for daily tank inspection records.
14. Failure to mark all leak interfaces for hazardous waste storage tank ancillary equipment.
15. Failure to maintain required information in the facility record for hazardous waste process vents.
16. Failure to maintain required information in the facility operating record for hazardous waste leak detection and repair.
17. Failure to maintain required information in the facility operating record for hazardous waste storage tank inspections, design, and maintenance.
18. Failure to close two of four containers of universal waste lamps.

The Respondent was advised that a follow-up inspection would be conducted within approximately 30 days to verify compliance with violations noted in the NOV. Due to the number and nature of the violations, an enforcement action request was sent to the Division's Compliance and Enforcement unit on July 29, 2024.

IX.

On July 24, 2024, the Respondent submitted a letter which indicated the development and initiation of waste monitoring and tracking processes which would preclude the accumulation and storage of large amounts of waste as noted during the May 7, 2024, CEI.

X.

On August 15, 2024, the Division sent a letter offering the Respondent the opportunity to schedule a Show Cause meeting. To accommodate ongoing compliance efforts, facility personnel requested the meeting be scheduled for September 18, 2024.

XI.

On August 20, 2024, the Respondent submitted a second letter outlining facility management's commitment to appropriate waste handling and regulatory compliance practices.

XII.

The August 21, 2024 Follow-up Inspection

On August 21, 2024, Division personnel conducted a follow-up inspection at the facility. Division personnel noted that violations 1 through 14 and 18 cited in the July 10, 2024, NOV had been corrected. Violations 15 through 17 had not been corrected and one additional violation, storing hazardous waste in tanks for greater than 90 days, was observed. The Division documented these findings in a letter dated September 12, 2024.

XIII.

On September 18, 2024, a Show Cause meeting was held. During this meeting, the Respondent submitted detailed information documenting the correction of all outstanding violations, as well as detailed information regarding personnel training and process changes that would preclude the recurrence of the observed violations.

XIV.

During the course of the investigation of the Respondent's facility, the Division has incurred damages in the amount of \$2,105.70.

VIOLATIONS

XV.

The Respondent failed to qualify for a permit exemption and continued to operate a hazardous waste facility without a permit for the treatment, storage, and disposal of hazardous waste in violation of Rules. *See* Rule 0400-12-01-.07(1)(b)4.(i). Specifically, the Respondent:

- failed to label and close containers in the Laboratory and Building 6 SAAs as required by Rule 0400-12-01-.03(1)(f)1.(iv)-(v);
- failed to close a container in the Laboratory CAA as required by Rule 0400-12-01-.03(1)(h)1.(i)(IV);

- failed to include the time and inspector's name on weekly CAA inspections as required by Rule 0400-12-01-.03(1)(h)1.(i)(V)II;
- failed to label and date containers in the Main CAA, Laboratory CAA, and Tanker CAA as required by Rule 0400-12-01-.03(1)(h)1.(v)(I);
- failed to provide adequate records documenting 90-day turnover for hazardous waste storage tanks as required by Rule 0400-12-01-.03(1)(h)1.(v)(II)III-IV;
- failed to store hazardous waste in tanks for less than 90 days as required by Rule 0400-12-01-.03(1)(h)1;
- failed to identify the location of the emergency response water supply and to identify the on-site emergency notification systems in the facility quick reference guide as required by Rule 0400-12-01-.03(1)(h)1.(vi) which incorporates Rule 0400-12-01-.03(12)(j)2.(vi)-(vii) by reference;
- failed to provide current facility and personnel information in the facility contingency plan as required by Rule 0400-12-01-.03(1)(h)1.(vi) which incorporates Rule 0400-12-01-.03(12)(j)2.(viii) by reference;
- failed to have all required elements in the employee training records as required by Rule 0400-12-01-.03(1)(h)1.(vii)(IV)IV;
- failed to provide complete tank integrity testing and Professional Engineer (PE) certifications for hazardous waste storage tanks as required by Rule 0400-12-01-.03(1)(h)1.(ii)(I) which incorporates Rule 0400-12-01-.05(10)(b)1 by reference which incorporates Rule 0400-12-01-.07(2)(a)10(i) by reference;
- failed to conduct daily inspections on all required elements of tank systems as required by Rule 0400-12-01-.03(1)(h)1.(ii)(I) which incorporates Rule 0400-12-01-.05(10)(f) by reference;
- failed to mark all required tank system components for air emission standards for equipment leaks as required by Rule 0400-12-01-.03(1)(h)1.(ii)(I) which incorporates Rule 0400-12-01-.05(28)(a) by reference;
- failed to provide all required elements for emission standards for process vents in the facility operating record as required by Rule 0400-12-01-.03(1)(h)1.(ii)(I) which incorporates Rule 0400-12-01-.05(27)(f) by reference;
- failed to provide all required elements for emission standards for equipment leaks in the facility operating record as required by Rule 0400-12-01-.03(1)(h)1.(ii)(I) which incorporates Rule 0400-12-01-.05(28)(o) by reference;

- failed to provide all required elements for emission standards for tanks, surface impoundments and containers in the facility operating record as required by Rule 0400-12-01-.03(1)(h)1.(ii)(I) which incorporates Rule 0400-12-01-.05(29)(k) by reference;

XVI.

The Respondent failed to provide accurate and complete hazardous waste determinations, as required by Rule 0400-12-01-.03(1)(b)1.-6.

XVII.

The Respondent failed to provide accurate generator activity and waste stream information on annual reports, as required by Rule 0400-12-01-.03(2)(d)1.(ii).

XVIII.

The Respondent failed to submit exception reports for ten missing manifests, as required by Rule 0400-12-01-.03(5)(c)1.

XIX.

The Respondent failed to close two containers of universal waste lamps, as required by Rule 0400-12-01-.12(2)(d)4.(i)(I).

XX.

By failing to store, containerize, label, or to provide information in accordance with the rules, regulations, or orders of the Commissioner, the Respondent has violated Tennessee Code Annotated section § 68-212-105(4).

ORDER AND ASSESSMENT

XXI.

Under the authority vested by sections 68-212-111 and 68-212-114 of the Act, I, Lisa A. Hughey, issue the following Order and Assessment to the Respondent:

1. The Respondent is assessed DAMAGES in the amount of **\$2,105.70** to be paid to the State on or before the 31st day after receipt of this Order and Assessment.
2. The Respondent is assessed a CIVIL PENALTY in the amount of **\$13,570.00** 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 totaling **\$15,675.70** should reference Case No. HWM 24-0022, be made payable to "Treasurer, State of Tennessee," and sent to the **Division of Fiscal Services – Consolidated Fee Section, Davy Crockett Tower, 500 James Robertson Parkway, 6th 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/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).

NOTICE OF RIGHTS

The Respondent(s) may appeal this Order and Assessment. Tenn. Code Ann. §§ 68-212-113 and 114. 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 -326 (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, Davy Crockett Tower, 500 James Robertson Parkway, 5th 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, Davy Crockett Tower, 500 James Robertson Parkway, 6th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Christopher

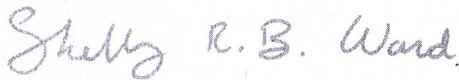
Lagan, State of Tennessee, Division of Solid and Hazardous Waste Management, Davy Crockett Tower, 500 James Robertson Parkway, 7th Floor, Nashville, TN 37243. Attorneys should contact the undersigned counsel of record. **The case number, HWM 24-0022, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Solid Waste Management, Tennessee Department of Environment and Conservation, on this 16th day of December, 2024.



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

Reviewed by:



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Associate Counsel
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