

**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>UNIVERSITY OF TENNESSEE</b>	)	
<b>KNOXVILLE MAIN CAMPUS</b>	)	
<b>EPA ID #TN0000879809</b>	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. HWM 21-0022</b>
	)	

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**CONSENT ORDER AND ASSESSMENT**

This Consent Order and Assessment is made and entered into by and between the Tennessee Department of Environment and Conservation Division of Solid Waste Management (Division or DSWM) and the University of Tennessee, an instrumentality of the State of Tennessee, on behalf of the University of Tennessee, Main Campus (Consenting Party or Respondent). The parties stipulate and agree as follows:

**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 for 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. She has received written delegation from the Commissioner to administer and enforce the Act.

## **II.**

The University of Tennessee - Knoxville Main Campus is a public higher education institution and a regulated entity. Its agent for service of process is Harold Pinkley, General Counsel, 505 Summer Place – UT Tower #1155, Knoxville, TN 37902.

## **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 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 Act. 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 (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. 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 is a part of the University of Tennessee education system. The Respondent generates and/or stores hazardous waste in six separate buildings on campus: Hesler Building, the Science and Engineering Research Facility, the Mossman Building, Strong Hall, Buehler Hall, and Fleming Warehouse (collectively “the facility”). The point of contact for the facility is located at 511 East Stadium Hall, 1425 Tee Martin Drive, Knoxville, Tennessee. The facility is a large quantity generator of hazardous waste and has an Environmental Protection Agency installation identification number of TN0 00-087-9809. The facility reported the generation of 10 hazardous waste streams for the 2020 reporting year, primarily from academic laboratory operations.

### **VII.**

#### **The June 8 and 9, 2021, Compliance Evaluation Inspection**

On June 8 and 9, 2021, Division personnel, in conjunction with Environmental Protection Agency personnel, conducted a Compliance Evaluation Inspection (CEI) consisting of a facility walk-through of laboratory and storage areas, and a records review. The Division inspector observed the following during the facility walk-through:

- **Hesler Building**
  - Room 606 – One 30-gallon container with an improper closure device.
  - Room 434 – One 1-gallon container not marked with the words “Hazardous Waste” and two 1-gallon containers not labeled with an indication of the hazards of the contents.
  - Room 614 – Several containers of universal waste lamps were not closed, were not labeled, and did not have an accumulation start date.
  - Room 414 – One container of universal waste lamps was not closed, was not labeled, and did not have an accumulation start date.

- Room 126 – A large quantity of universal waste lamps were not in containers, a large number of containers of universal waste lamps were not closed, were not labeled, and did not have an accumulation start date.
- **Science and Engineering Research Facility (SERF)**
  - Central Accumulation Area – lack of aisle space between drums of properly labeled containers. This was corrected during the CEI.
  - Room 624/626 – Two 5-gallon containers of hazardous waste were not properly closed.
  - Room 635 – One ziplock bag of hazardous waste was not closed.
  - Room 616 – One ziplock bag of hazardous waste was not closed.
  - Room 606 – One plastic bag was not labeled with an indication of the hazards of the contents.
  - Room 604 – One ziplock bag of hazardous waste was not closed.
  - Room 408 – One 5-liter bottle of hazardous waste was not labeled with the words “Hazardous Waste”, was not marked with an indication of the hazards of the contents, and was not properly closed.
- **Mossman Building**
  - Room 641C – One container of hazardous waste was not closed.
  - Room 641B – Two containers of hazardous waste were not closed
  - Room 641B – One plastic bag of hazardous waste was not marked with an indication of the hazards of the contents.
  - Room 641A – One plastic bag of hazardous waste was not closed.
  - Room 420D – One bottle of hazardous waste was not marked with an indication of the hazards of the contents.
  - Room 441B – Four containers of hazardous waste were not marked with an indication of the hazards of the contents.
  - Room 441A – Numerous small containers of hazardous waste were not labeled with words “Hazardous Waste” and were not marked with an indication of the hazards of the contents.
- **Strong Hall Undergraduate Labs**
  - Rooms 315 and 316 – Numerous small containers of hazardous waste were not properly closed, and several were not marked with an indication of the hazards of the contents.
- **Buehler Hall Graduate Labs**
  - Room 665 – Several containers of hazardous waste under a hood were not marked with an indication of the hazards of the contents.
  - Room 630 – Eight of twelve containers under a hood were not marked with an indication of the hazards of the contents and one of these containers was also not closed.
  - Rooms 602 and 603 – Several four-liter containers of hazardous waste were not properly closed.
  - Hallway – one container of universal waste batteries was not properly labeled.

## VIII.

On July 22, 2021, the Division issued a Notice of Violation (NOV) to the Respondent for the Rules violations found during the June 8 and 9, 2021, CEI. The NOV cited the following violations:

1. Failure to maintain adequate aisle space in the central accumulation area of the SERF.
2. Failure to close numerous satellite accumulation area containers in the Hesler Building, SERF, the Mossman Building, Strong Hall, and Buehler Hall.
3. Failure to label satellite accumulation area containers with the words "Hazardous Waste".
4. Failure to mark satellite accumulation area containers with an indication of the hazards of the contents in the Hesler Building, SERF, the Mossman Building, Strong Hall, and Buehler Hall.
5. Failure to properly label one container of universal waste batteries in Buehler Hall.
6. Failure to properly contain and close containers of universal waste lamps in the Hesler Building.
7. Failure to properly label containers of universal waste lamps in the Hesler Building.
8. Failure to provide an adequate mechanism to track the accumulation start dates for universal waste lamps.

The Respondent was instructed to initiate actions to correct the outstanding violations noted during the June 8 and 9, 2021, CEI.

## IX.

### **The August 24, 2021, Follow-up Inspection**

On August 24, 2021, Division personnel, conducted a follow-up inspection consisting of a facility walk-through of laboratory and storage areas where violations had been previously documented. The Division inspector observed that violations #1 and #5, cited in the July 22, 2021, NOV, had been corrected. The Division inspector additionally observed the following during the facility walk-through:

- **Hesler Building**
  - Room 126 – A large quantity of universal waste lamps remained uncontained. One container of universal waste lamps was not closed, was not labeled, and did not have an accumulation start date.
  
- **Science and Engineering Research Facility (SERF)**
  - Room 635 – One ziplock bag of hazardous waste was not closed.
  - Room 616 – Two ziplock bag of hazardous waste were not closed.
  - Room 606 – One plastic bag was not marked with an indication of the hazards of the contents.
  
- **Mossman Building**
  - Room 641B – One container of hazardous waste was not closed.
  - Room 641A – One plastic bag of hazardous waste was not closed, and one container was not labeled with the words “Hazardous Waste”.
  - Room 420D –Several small bottles of hazardous waste were not marked with an indication of the hazards of the contents.
  
- **Strong Hall Undergraduate Labs**
  - Rooms 315 and 316 – Several containers were not marked with an indication of the hazards of the contents.
  
- **Buehler Hall Graduate Labs**
  - Room 665 – Several containers of hazardous waste under a hood were not properly closed.
  - Room 630 – One container under a hood was not marked with an indication of the hazards of the contents.

## X.

On September 14, 2021, the Division issued a second NOV to the Respondent for the Rules violations found during the August 24, 2021, follow up CEI. The second NOV acknowledge the correction of Violations #1 and #5 and also noted the continuing non-compliance of the outstanding violations noted during the June 8 and 9, 2021, CEI. The Respondent was directed to immediately initiate actions to correct the outstanding violations.

## XI.

On October 12, 2021, the Respondent submitted a letter to the Division, documenting the actions taken to correct the outstanding violations noted during the August 24, 2021, follow up CEI. The Respondent stated that all violations regarding the proper closing, labeling with the words “Hazardous Waste,” and marking with an indication of the hazards of the contents, had been corrected. Additionally, all universal waste lamp violations had been corrected. Finally, an additional Central Accumulation Area had been designated in Room 317 of Strong Hall, inspection forms were updated with additional information, spill kits had been placed in additional areas, and secondary containment had been provided where needed.

## **XII.**

On November 22, 2021, the Division conducted a second follow up CEI. The Division inspector observed that violations #3, #6, #7, and #8 had been fully corrected. The Division inspector additionally observed the following:

- SERF
  - Room 635 – A small number of containers were not properly closed.
- Buehler
  - Room 665 – A small number of containers were not properly closed.
  - Room 665 - One container was not marked with indication of the hazards of the contents.
  - Room 630 – A small number of containers were not properly closed.

## **XIII.**

On December 9, 2021, the Division issued a Third NOV to the Respondent for the ongoing violations observed during the November 22, 2021, follow-up CEI. The Respondent was directed to immediately initiate actions to correct the outstanding violations.

## **XIV.**

During the course of the investigation, the Division incurred damages in the amount of \$4,581.40.

## VIOLATIONS

### **XV.**

By failing to provide adequate aisle space in the central accumulation area, the Respondent violated Rule 0400-12-01-.03(12)(f).

Rule 0400-12-01-.03(12)(f) states:

(12) Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators

(f) Required aisle space

The large quantity generator 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.

### **XVI.**

By failing to properly close satellite accumulation area containers, the Respondent violated Rule 0400-12-01-.03(1)(f)1.(iv).

Rule 0400-12-01-.03(1)(f)1.(iv) states:

(1) General

(f) Satellite accumulation area regulations for small and large quantity generators

1. A generator may accumulate as much as 55 gallons of non-acute hazardous waste or either (i) one quart of liquid acute hazardous waste listed in subparagraph (4)(b) or part (4)(d)5 of Rule 0400-12-01-.02 or (ii) 1 kg (2.2 lbs) of solid acute hazardous waste listed in subparagraph (4)(b) or part (4)(d)5 of Rule 0400-12-01-.02 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 the requirements of Rules 0400-12-01-.05 through 0400-12-01-.07 and 0400-12-01-.09, provided that all of the conditions for exemption in this subparagraph are met. A generator may comply with the conditions for exemption in this subparagraph instead of complying with the conditions for exemption in part (g)2 or (h)1 of this paragraph, except as required in subparts (vii) and (viii) of this part. The conditions for exemption for satellite accumulation are:

- (iv) A container holding hazardous waste must be closed at all times during accumulation, except:
  - (I) When adding, removing, or consolidating waste; or
  - (II) When temporary venting of a container is necessary
    - I. For the proper operation of equipment, or
    - II. To prevent dangerous situations, such as build-up of extreme pressure.

## **XVII.**

By failing to label satellite accumulation area containers with the words “Hazardous Waste,” the Respondent violated Rule 0400-12-01-.03(1)(f)1.(v)(I).

Rule 0400-12-01-.03(1)(f)1.(v)(I). states:

(1) General

(f) Satellite accumulation area regulations for small and large quantity generators

1. A generator may accumulate as much as 55 gallons of non-acute hazardous waste or either (i) one quart of liquid acute hazardous waste listed in subparagraph (4)(b) or part (4)(d)5 of Rule 0400-12-01-.02 or (ii) 1 kg (2.2 lbs) of solid acute hazardous waste listed in subparagraph (4)(b) or part (4)(d)5 of Rule 0400-12-01-.02 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 the requirements of Rules 0400-12-01-.05 through 0400-12-01-.07 and 0400-12-01-.09, provided that all of the conditions for exemption in this subparagraph are met. A generator may comply with the conditions for exemption in this subparagraph instead of complying with the conditions for exemption in part (g)2 or (h)1 of this paragraph, except as required in subparts (vii) and (viii) of this part. The conditions for exemption for satellite accumulation are:

- (v) A generator must mark or label its container with the following:
  - (I) The words “Hazardous Waste”

## **XVIII.**

By failing to mark satellite accumulation area containers with an indication of the hazards of the contents, the Respondent violated Rule 0400-12-01-.03(1)(f)1.(v)(II).

Rule 0400-12-01-.03(1)(f)1.(v)(II) states:

(1) General

(f) Satellite accumulation area regulations for small and large quantity generators

1. A generator may accumulate as much as 55 gallons of non-acute hazardous waste or either (i) one quart of liquid acute hazardous waste listed in subparagraph (4)(b) or part (4)(d)5 of Rule 0400-12-01-.02 or (ii) 1 kg (2.2 lbs) of solid acute hazardous waste listed in subparagraph (4)(b) or part (4)(d)5 of Rule 0400-12-01-.02 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 the requirements of Rules 0400-12-01-.05 through 0400-12-01-.07 and 0400-12-01-.09, provided that all of the conditions for exemption in this subparagraph are met. A generator may comply with the conditions for exemption in this subparagraph instead of complying with the conditions for exemption in part (g)2 or (h)1 of this paragraph, except as required in subparts (vii) and (viii) of this part. The conditions for exemption for satellite accumulation are:

(v) A generator must mark or label its container with the following:

(II) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

## XIX.

By failing to properly label universal waste batteries, the Respondent violated Rule 0400-12-01-.12(2)(e)1.

Rule 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).”

**XX.**

By failing to place and maintain universal lamps in closed containers, the Respondent violated Rule 0400-12-01-.12(2)(d)4.(i)(I).

Rule 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.

**XXI.**

By failing to properly label universal waste lamps, the Respondent violated Rule 0400-12-01-.12(2)(e)5.

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

(2) Standards for Small Quantity Handlers of Universal Waste

(e) Labeling/Marking

5. Each lamp or a container or package in which such lamps are contained, must be labeled or marked clearly with any one of the following phrases: “Universal Waste - Lamp(s)” or “Waste Lamp(s)” or “Used Lamp(s)” or “Universal Waste - Bulb(s)” or “Waste Bulb(s)” or “Used Bulb(s)”. Containers or packages destined for out-of-state shipment shall use the term “Lamps” in lieu of “Bulbs.”

**XXII.**

By failing to adequately track universal waste accumulation dates, the Respondent violated Rule 0400-12-01-.12(2)(f)3.

Rule 0400-12-01-.12(2)(f)3. states:

(2) Standards for Small Quantity Handlers of Universal Waste

(f) Accumulation Time Limits

3. A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:
  - (i) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
  - (ii) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;
  - (iii) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;
  - (iv) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
  - (v) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or (vi) Any other method which

clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

### **XXIII.**

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 Tenn. Code Ann. § 68-212-105(4).

Tenn. Code Ann. § 68-212-105(4) provides:

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.

### **ORDER AND ASSESSMENT**

### **XXIV.**

WHEREFORE, PREMISES CONSIDERED, pursuant to the authority vested by sections 68-212-111 and 68-212-117 of the Act, I, Lisa A. Hughey, after proper consideration of the harm done to 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, orders, and Respondents consents as follows:

1. The Respondent is hereby assessed damages in the amount of \$4,581.40 be paid to the State on or before the 31<sup>st</sup> day after receipt of this Order.
2. The Respondent is hereby assessed a civil penalty in the amount of \$12,170.00 to be paid to the State on or before the 31<sup>st</sup> day after receipt of this Order.

All payments shall be made payable to the “Treasurer, State of Tennessee” and sent to Division of Fiscal Services – Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10<sup>th</sup> Floor,

Nashville, Tennessee 37243. The case number **HWM21-0022**, should be written on all correspondence regarding this matter.

The Director of the Division may, for good cause shown, extend the compliance dates contained within the Consent Order and Assessment. To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventative measures taken to minimize the delay. Any such extension by the Division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the foregoing Consent Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Consent Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future. Failure to comply with any of the requirements of the Consent Order and Assessment could lead to further enforcement actions which may include additional civil penalties, assessments of damages and/or recovery of costs.

#### **WAIVER OF RIGHT TO APPEAL**

Respondent understands that it has the right to appeal this Consent Order and Assessment pursuant to Tennessee Code §§ 68-212-113 and 68-212-114. Respondent knowingly and voluntarily waives all of these appeal rights.

**ORDERED** by the Director of the Division of Solid Waste Management, Department of Environment and Conservation. **AGREED AND CONSENTED** to by Respondent.

*Lisa A. Hughey*

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

August 24, 2022

Date

THE UNIVERSITY OF TENNESSEE

By : *David L Miller*

*8/18/2022*

Date :

Title: *Sr. Vice President and CFO*

Reviewed by:

*Denard Mickens*

\*\* (Aug 24, 2022 12:47 CDT)

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