



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Division of Solid Waste Management
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 14th Floor
Nashville, Tennessee 37243

December 18, 2023

Corporation Service Company
2908 Poston Avenue
Nashville TN 37203-1312

CERTIFIED MAIL
7021 0950 0001 7916 5232
RETURN RECEIPT REQUESTED

RE: CASE NO. HWM 23-0020

To Whom This May Concern:

Enclosed please find an Order and Assessment issued to Brenntag Mid-South, Inc., by the Tennessee Department of Environment and Conservation, Division of Solid Waste Management (DSWM). 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 615-837-5350.

Sincerely,

Christopher Lagan
[Christopher Lagan \(Dec 18, 2023 12:13 CST\)](#)

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

Enclosure

cc: Alan Newman, EPA Region 4, Atlanta, GA
Lisa A. Hughey, Director, DSWM
Rick Whitson, Environmental Fellow, DSWM
Rob Ashe, Deputy Director of Field Operations, DSWM
Beverly Philpot, Hazardous Waste Program Manager, DSWM
Harry McCann, Chattanooga Environmental Field Office Manager, DSWM
Mark Jordan, Environmental Consultant, DSWM
Records.SWM@tn.gov

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

IN THE MATTER OF:)	DIVISION OF SOLID WASTE
)	MANAGEMENT
BRENNTAG MID-SOUTH, INC.)	
)	
TND 08-406-0086)	CASE NO. HWM 23-0020
)	
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 for administering and enforcing the Tennessee Hazardous Waste Management Act of 1977, Tennessee Code Annotated sections 68-212-101 through -121 and the Tennessee Used Oil Collection Act of 1993, Tennessee Code Annotated sections 68-211-1001 through -1019 (Acts). 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 Acts.

II.

Brenntag Mid-South, Inc., (Brenntag or Respondent) is a foreign limited liability corporation created in the State of Kentucky and is authorized to conduct business in the State of

Tennessee. Its agent for service of process is Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203-1312.

JURISDICTION

III.

When the Commissioner finds that provisions of the Acts 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 68-211-1012. 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 68-211-1012. 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 Acts or any rule or regulation authorized by the Acts or enforcing any requirement of an order issued by the Commissioner, the Commissioner is authorized 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) and 68-211-1012. The Commissioner also has authority to inspect any samples of any waste, samples of any containers or labeling for such wastes, samples of ambient air, surface waters, and ground waters at the facility or site, as

well as the authority to inspect and copy any records, reports, test results, or other information relating to the purposes of the Acts.

FACTS

VI.

The Respondent is a wholesale distributor of reagent, specialty, and industrial chemicals. Its facility (facility) is located at 317 Wauhatchie Pike, Chattanooga, Tennessee 37419. The facility operates 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 TND084060086 and has notified the Division of the generation of thirty-two hazardous waste streams.

Facility operations include bulk chemical storage, repackaging, blending of chemicals, production and distribution of sodium hypochlorite, and reconditioning of chlorine gas cylinders and empty product drums. Non-conforming products (out of date material, broken packaging, spill material, etc.) are held in a non-conforming product area of the Main Warehouse. Attempts are made to correct and resale or reuse these non-conforming products. If these non-conforming products cannot be reused or resold within one year, they are transferred to the hazardous waste central accumulation area (CAA) in the Flammable Storage Building for transportation off site as hazardous waste.

VII.

The May 24, 2023, Compliance Evaluation Inspection

On May 24, 2023, 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.

VIII.

In the non-conforming product area of the Main Warehouse, the Division inspector observed:

- One 55-gallon drum of Ammonium Persulfate with a facility label dated April 21, 2022, stored for greater than one year.
- Two 55-gallon drums of Clearitas 820, a corrosive liquid, with a facility label dated November 11, 2020, stored for greater than one year.
- One black 55-gallon drum with no label or date. Facility personnel could not identify the contents of the drum or how long it had been there.

IX.

In the Chlorine Department satellite accumulation area (SAA), the Division inspector observed one 55-gallon drum of aerosol can residue waste that was not labeled with the words "Hazardous Waste" and not labeled with an indication of the hazards of the contents. Facility personnel appropriately labeled this drum during the CEI. The Division inspector additionally observed one unlabeled 5-gallon container and one small unlabeled tray of shot-blast booth waste.

X.

In the Laboratory, the Division inspector observed one container of universal waste lamps that was dated January 18, 2022, and one container of universal batteries that was dated January

2, 2022. Both containers exceeded the regulatory one-year limit for accumulation of universal waste.

XI.

During the records review, the Division inspector observed:

- The 55-gallon drums observed in the non-conforming product area had exceeded the facility's Standard Operating Procedure and Management Statement, which requires a hazardous waste determination be conducted within one year of the material being determine unusable for it's intended purpose. The material is therefore subject to regulation as a potential hazardous waste.
- A hazardous waste determination had not been conducted on the 5-gallon bucket and the small tray of shot-blast booth waste.
- The facility had not notified the Division of the generation of the hazardous waste aerosol can residue waste stream.
- Hazardous waste refresher training of four hazardous waste CAA area managers exceeded one year from the previous training.

XII.

On June 27, 2023, the Division sent a Notice of Violation (NOV) to the Respondent, documenting the observations made during the May 24, 2023, CEI. The NOV cited the following Rules violations:

1. Failure to label one SAA container with the words "Hazardous Waste" and with an indication of the hazards of the contents.
2. Failure to notify the Division of the generation of a hazardous waste stream.
3. Storage of universal waste lamps and universal waste batteries for more than one year.
4. Failure to provide annual refresher training for employees that handle hazardous waste.
5. Failure to conduct hazardous waste determinations.

The Respondent was instructed to submit notification of compliance for these violations by July 27, 2023.

XIII.

The August 15, 2023, Follow Up Inspection

On August 15, 2023, Division personnel conducted a follow-up inspection at the facility.

The Division inspector observed the following:

- The Respondent had submitted a notification of waste stream generation for the aerosol can residue waste on July 14, 2023.
- The Respondent had shipped all universal waste lamps and universal waste batteries on August 4, 2023.
- Facility personnel had received hazardous waste refresher training on July 13, 2023.
- The Respondent had conducted hazardous waste determinations on the following:
 - One 55-gallon drum of Ammonium Persulfate and One 55-gallon drum of Clearitas 820 and both had been determined to be hazardous and shipped as hazardous waste on July 5, 2023.
 - The unlabeled 55-gallon which was determined to be non-hazardous glycerine and was shipped for disposal on July 5, 2023.
 - The 5-gallon container and small tray of shot-blast waste had been determined to be hazardous and placed into the CAA awaiting shipping as hazardous waste.

The Division acknowledged the correction of all violations in a letter to the Respondent dated August 16, 2023.

XIV.

On August 22, 2023, the Division sent a letter to the Respondent offering the opportunity to schedule a Show Cause meeting to discuss the violations noted during the May 24, 2023 CEI. The Division did not receive a response to this letter.

XV.

During the course of the investigation of the Respondent's facility, the Division has incurred damages in the amount of \$2,025.00. of the Respondent's facility, the Division has incurred damages in the amount of **\$2,025.00.**

VIOLATIONS

XVI.

The Respondent failed to label one container in the warehouse hazardous waste SAA, as required by Rule 0400-12-01-.03(1)(f)1.(v)(I) & (II), which is a condition for exemption from the requirement to obtain a permit for the treatment, storage, and disposal of hazardous waste.

XVII.

The Respondent failed to notify the Division of the generation of a hazardous waste stream, for hazardous waste aerosol can residue, as required by Rule 0400-12-01-.03(2)(b).

XVIII.

The Respondent failed to meet the one-year time limit for accumulation of universal waste, as required by Rule 0400-12-01-.12(2)(f)1.

XIX.

The Respondent failed to provide hazardous waste review training within one year, as required by Rule 0400-12-01-.03(1)(h)1.(vii)(III), which is a condition for exemption from the requirement to obtain a permit for the treatment, storage, and disposal of hazardous waste.

XX.

The Respondent failed to conduct hazardous waste determinations, as required by Rule 0400-12-01-.03(1)(b).

XXI.

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

XXII.

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

1. The Respondent is assessed DAMAGES in the amount of **\$2,025.00** 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 **\$4,200.00** 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 **\$6.225.00** should reference Case No. HWM 23-0020 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 Acts or regulations promulgated thereunder or the authority to assess costs, civil penalties and/or damages incurred by the State against the Respondent(s). 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.

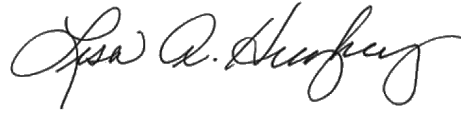
If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-212-113; Tenn. Code Ann. § 4-5-301 to -326 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 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, 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, William R. 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, HWM 23-0020, 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 18th day of December, 2023.



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

Reviewed by:



** (Dec 18, 2023 11:35 CST)

Denard Mickens
BPR # 025033
Assistant General Counsel
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