



**State of Tennessee**  
**Department of State**  
Administrative Procedures Division  
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March 16, 2021

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RE: In the Matter of: TN Department of Environment & Conservation, Petitioner v.  
RRI VT Bristol LLC, Ted E. Cox, Respondents.  
Docket No. 04.27-157349J

Enclosed is an Initial Order rendered in the above-styled cause of action.

Administrative Procedures Division  
Tennessee Department of State

/aem  
Enclosure

**STATE OF TENNESSEE  
UNDERGROUND STORAGE TANKS AND SOLID WASTE DISPOSAL CONTROL  
BOARD**

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF SOLID WASTE</b>
	)	<b>MANAGEMENT</b>
<b>TENNESSEE DEPARTMENT OF</b>	)	
<b>ENVIRONMENT AND</b>	)	
<b>CONSERVATION,</b>	)	<b>CASE NO. SWM18-0008</b>
<i>Petitioner,</i>	)	
	)	
<b>v.</b>	)	
	)	<b>DOCKET NO. 04.27-157349J</b>
<b>RRI VT BRISTOL, LLC,</b>	)	
<b>TED E. COX,</b>	)	
<i>Respondents.</i>	)	

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**INITIAL ORDER**

This matter came before Administrative Judge J. Shannon Barnhill, assigned by the Secretary of State, Administrative Procedures Division, to sit on behalf of the Underground Storage Tanks and Solid Waste Disposal Control Board. Attorney Jamie F. Little represented Ted E. Cox and RRI VT Bristol, LLC (“Respondents”). Attorney Katherine B. Barnes represented the Tennessee Department of Environment and Conservation (“Department”).

On January 8, 2019, the Commissioner of the Department issued an Order and Assessment to the Respondents for unlawful disposal of waste tires in violation of the Solid Waste Disposal Act, Tennessee Code Annotated (“Tenn. Code Ann.”) section 68-211-104. On February 11, 2019, the Respondents appealed the Order and Assessment. The Department filed a Motion for Summary Judgment in this matter on August 3, 2020, and the Respondents, through counsel, gave notice via email on August 11, 2020, that they would not be filing a response to

the Motion for Summary Judgment. The Order Granting Motion for Summary Judgment was entered on August 13, 2020, giving the Respondents until December 31, 2020, to pay the full civil penalties assessed (\$494,235.50) or clean up the site in a manner approved by the Department and pay alternative civil penalties (\$94,235.50). The Respondents have failed to comply with the Order Granting Motion for Summary Judgment.

### **FINDINGS OF FACT**

1. On January 8, 2019, the Commissioner of the Tennessee Department of Environment and Conservation (“Department”) issued an Order and Assessment of Civil Penalties to the Respondents (“Order and Assessment”), citing them for unlawful disposal of waste tires in violation of the Solid Waste Disposal Act.
2. On February 11, 2019, the Department received the Respondents' appeal of the Order and Assessment. In their appeal, the Respondents argued that the tires were not solid waste because they were to be used in a conceptual waste-to-energy facility.
3. The Department made numerous attempts to obtain information regarding this conceptual waste-to-energy facility and filed a Motion to Compel after the Respondents refused to produce the documentation.
4. On November 26, 2019, the Tribunal entered an Order Compelling Discovery related to the waste-to-energy facility and the waste-to-energy defense.
5. The Respondents failed to produce the required documents to the Department, despite the Tribunal's Order Compelling Discovery.
6. On January 21, 2020, the Tribunal granted the Department's motion to limit issues and specifically prohibited the waste-to-energy defense at trial.

7. The order limited the issues to the Respondents' historical use of the site and their violation of the Solid Waste Disposal Act and implementing regulations.
8. Mr. Cox admitted to placing tires at the site.
9. Mr. Cox is the only member of Respondent RRI VT Bristol, LLC.
10. RRI VT Bristol, LLC bought the site in 2016 and is the current owner.
11. Neither Mr. Cox nor RRI VT Bristol, LLC have a permit from the Department to dispose of tires at the site.
12. The Respondents began collecting tires on the site in question as early as 2012, and by 2017 Respondents had disposed of an estimated 400,000 tires on the property.
13. The Order Granting Motion for Summary Judgment was entered on August 13, 2020, giving the Respondents until December 31, 2020, to pay the full civil penalties assessed (\$494,235.50) or clean up the site in a manner approved by the Department and pay alternative civil penalties (\$94,235.50).
14. The Respondents have made no payments to the Department; nor have they made any effort to clean up the site as of this date.

#### **CONCLUSIONS OF LAW**

1. The Underground Storage Tanks and Solid Waste Disposal Control Board (“Board”) has jurisdiction to hear and render a decision in this contested case proceeding pursuant to Tenn. Code Ann. sections 68-211-113(a)(2) and 68-211-117(b)(2). Pursuant to Tenn. Code Ann. section 68-211-113(b), the undersigned, sitting alone, sits on behalf of the Board to decide this matter. The Board, not the Department, is the “agency,” as defined by Tenn. Code Ann. section 4-5-102(2).

2. In this case, the Department has the burden of proof to show by a preponderance of the evidence that Respondents have violated the Solid Waste Disposal Act, Tenn. Code Ann. sections §§ 68-211-101 to -124, and that the relief set out in Commissioner's Order and Assessment SWM18-0008 is appropriate. *See* Tenn. Comp. R. & Regs. 1360-04-01-.02(3) and (7).

3. The Department has met its burden of proof on all claims.

4. Tenn. Code Ann. section 68-211-104 provides, in relevant part:

It is unlawful to:

- (3) Construct, alter, or operate a solid waste processing or disposal facility or site in violation of the rules, regulations, or orders of the commissioner or in such a manner as to create a public nuisance; or
- (4) Transport, process or dispose of solid waste in violation of this chapter, the rules and regulations established under this chapter or in violation of the orders of the commissioner or board.

5. The rules of the Board further provide:

The requirements of this rule apply as specified to operators of facilities in Tennessee. Except as otherwise provided in this rule, no facility can lawfully store, process, or dispose of solid waste unless the operator has a permit.

Tenn. Comp. R. & Regs. 0400-11-01-.02(1)(b)1.

6. Tenn. Code Ann. section 68-211-112 provides, in relevant part:

When the commissioner finds, upon investigation, that any provisions of this part are not being carried out, and that effective measures are not being taken to comply with this part, the commissioner may issue an order for correction to the responsible person, and this order shall be complied with within the time limit specified in the order.

7. Tenn. Code Ann. section 68-211-117(a) provides, in relevant part:

- (1) Any person who violates or fails to comply with any provision of this part or any rule, regulation, or standard adopted pursuant to this part shall be subject to a civil penalty of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per day for each day of violation;

- (2) Each day such violation continues constitutes a separate violation.

Tenn. Code Ann. section 68-211-117(c) further provides:

- (c) In assessing a civil penalty, the following factors may be considered:
  - (1) The harm done to public health or the environment;
  - (2) The economic benefit gained by the violators;
  - (3) The amount of effort put forth by the violator to attain compliance; and
  - (4) Any unusual or extraordinary enforcement costs incurred by the commissioner.

8. Tenn. Code Ann. section 68-211-117(a) and (d) provide:

- (a)(2) Each day such violation continues constitutes a separate violation. In addition, such person shall also be liable for any damages to the state resulting therefrom, without regard to whether any civil penalty is assessed.
- (d) Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this part, and in restoring the air, water, land and other property, including animal, plant and aquatic life, of the state to their former condition.

It is therefore **CONCLUDED** that, considering the totality of the evidence, the State has shown, by a preponderance of the evidence, that Respondents have unlawfully disposed of solid waste on the site in question and that Respondents have failed to comply in any manner with the Order Granting Summary Judgment entered August 13, 2020.

### **REASONS FOR DECISION**

The policy reasons for this decision are to uphold the law of the State of Tennessee and to ensure compliance with applicable environmental regulations.

Accordingly, the Commissioner's Order and Assessment issued January 8, 2019, is hereby **AFFIRMED** and the appeal is **DISMISSED** with prejudice.

It is so **ORDERED**.

This INITIAL ORDER is entered and effective on this 16 of March, 2021.



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J. Shannon Barnhill  
Administrative Judge  
Administrative Procedures Division  
Office of the Secretary of State

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this the 16 day of March, 2021.



STEPHANIE SHACKELFORD, DIRECTOR  
ADMINISTRATIVE PROCEDURES DIVISION  
OFFICE OF THE SECRETARY OF STATE

TENNESSEE DEPARTMENT OF  
ENVIRONMENT AND CONSERVATION,  
Petitioner,

v.

RRI VT BRISTOL, LLC,  
TED E. COX,  
Respondents.

**NOTICE OF APPEAL PROCEDURES**

**REVIEW OF INITIAL ORDER**

Attached is the Administrative Judge's decision in your case before the **Tennessee Department of Environment & Conservation**, called an Initial Order, with an entry date of **March 16, 2021**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the decision is incorrect. The APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **March 31, 2021**. A new 15 day period for the filing of an appeal to the **Agency** (as set forth in paragraph (2), below) starts to run from the entry date of an order disposing of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal. Such an Appeal must be **received** by the APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the **Agency**. Mail to the APD a document that includes your name and the above APD case number, and states that you want to appeal the decision to the **Agency**, along with the specific reasons for your appeal. The APD must **receive** your written Appeal no later than 30 days after the entry of the Initial Order, which is no later than **April 15, 2021**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The Agency decides to Review the Initial Order:** In addition, the **Agency** may give written notice of **its** intent to review the Initial Order, within 15 days after the entry of the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the **Agency** renders a Final Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order on **April 1, 2021**. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**



TENNESSEE DEPARTMENT OF  
ENVIRONMENT AND CONSERVATION,  
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v.

RRI VT BRISTOL, LLC,  
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**NOTICE OF APPEAL PROCEDURES**

**STAY**

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be **received** by the APD within 7 days of the date of entry of the Initial Order, which is no later than **March 23, 2021**. See TENN. CODE ANN. § 4-5-316.

**REVIEW OF A FINAL ORDER**

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the **Agency** deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the **Agency** rendered a Final Order, the **Agency** will consider the Petition. The APD must **receive** your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the **Agency**; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. See TENN. CODE ANN. § 4-5-317.
2. **A Party Files an Appeal of the Final Order:** A person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of (a) the date of entry of a Final Order; or (b) the date the Initial Order becomes a Final Order. See TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. See TENN. CODE ANN. §§ 4-5-322 and 4-5-317.
3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the **Agency** deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the **Agency** rendered a Final Order, the **Agency** will consider the Petition. A Petition for a stay of a Final Order must be **received** by the APD within 7 days after the Initial Order becomes a Final Order. See TENN. CODE ANN. § 4-5-316.

**FILING**

**IN THE MATTER OF:**

**APD CASE No. 04.27-157349J**

**TENNESSEE DEPARTMENT OF  
ENVIRONMENT AND CONSERVATION,  
Petitioner,**

**v.**

**RRI VT BRISTOL, LLC,  
TED E. COX,  
Respondents.**

**NOTICE OF APPEAL PROCEDURES**

To file documents with the Administrative Procedures Division, use this address:

Secretary of State  
Administrative Procedures Division  
William R. Snodgrass Tower  
312 Rosa L. Parks Avenue, 8<sup>th</sup> Floor  
Nashville, TN 37243-1102  
Fax: (615) 741-4472