COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Johnston Memorial Hospital, Inc. IR No. 2010-S-2166

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Johnston Memorial Hospital, Inc., for the purpose of resolving violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "JMH" means Johnston Memorial Hospital, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Johnston Memorial Hospital, Inc. is a "person" within the meaning of Va. Code § 10.1-1400.

5. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

6. "Regulations" means Virginia's Regulated Medical Waste Management Regulations, 9 VAC 20-120-10, *et seq.*

7. "RMW" means regulated medical wastes, as that term is defined in 9 VAC 20-120-10, *et seq.*

8. "Va. Code" means the Code of Virginia (1950), as amended.

9. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

10. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. On February 4, 2010, DEQ staff was notified by City of Bristol, Virginia Integrated Solid Waste Management Facility personnel that the facility had received RMW that day. The RMW was contained in a 6.06 ton load of waste dumped on the landfill working face. Per City of Bristol, Virginia personnel, the RMW was received from JMH, and was delivered by Waste Management. Per documentation provided to DEQ, the RMW included blood-soaked items, IV bags and hoses containing blood, and blue surgical suits, all contained inside black bags.

2. Per documentation provided by City of Bristol, Virginia personnel, a total of 19.23 tons of material identified as contaminated medical waste (a mixed load of municipal solid waste and regulated medical waste removed from the landfill working face) was collected in a roll-off container, moved to the transfer station tipping floor, tarped and held for transport for proper disposal. The material was later transferred to two lined containers, which were shipped on February 9, and February 12, 2010. Environmental Options was contracted by JMH to transport the rejected material for proper disposal at Sci-Med Waste Systems in Roanoke, Virginia.

3. 9 VAC 20-120-150. Lists of controlled regulated medical wastes (of the Regulated Medical Waste Management Regulations) lists the following as being subject to this chapter: 2) Human blood and human body fluids. Wastes consisting of human blood or human body fluids or items contaminated with human blood or human body fluids. 4) Sharps. Sharps likely to be contaminated with organisms that are pathogenic to healthy humans, and all needles, syringes with attached needles, suture needles, and scalpels are regulated medical wastes; ...7) Any solid waste contaminated by or mixed with regulated medical wastes.

4. 9 VAC 20-120-210. Packaging prior to storage, treatment or transport. All regulated medical waste shall be packaged as follows: 1. When regulated medical wastes are discarded, they shall be placed in containers meeting the requirements of the standards for occupational exposure to bloodborne pathogens in the general industry standard in 16 VAC 25-90-1910.1030. The general industry standard requires the packaging to be closable, constructed to prevent leakage, labeled with the biohazard symbol, and closed to prevent spillage during handling. Upon being placed in storage, red bags shall be used for the packaging of all regulated medical waste except as provided in subdivision 2 of this section. Packaging shall be labeled as provided for in 9 VAC 20-120-220. 2. Contaminated sharps shall be placed directly in containers as required by the general industry standards in 16 VAC 25-90-1910.1030. The containers shall be labeled as provided for in 9 VAC 20-120-220. 3. As bags and containers become full, they shall be sealed such that no waste materials can leak. 4. Prior to transporting regulated medical waste, waste will be packaged for transportation in accordance with the standards of 49 CFR Part 173 or packaged in accordance with an exemption approved by the United States Department of Transportation.

5. 9 VAC 20-120-220. Labeling requirements. Waste packaged under subdivisions 1 or 2 of 9 VAC 20-120-210 shall be labeled. The label shall be securely attached to or printed on packaging. The label may be a tag securely affixed to the package. Indelible ink shall be used to complete the information on the label. The label and the information provided on the label must be clearly legible. The following information shall be included: 1. The name, address and business telephone number of the generator. 2. "Regulated Medical Waste" in large print. 3. The Biological Hazard Symbol.

6. 9 VAC 20-120-300. Methods of treatment and disposal. B. No regulated medical waste shall be disposed of in a solid waste landfill or other solid waste management facility.

7. On February 22, 2010, the Department issued Notice of Violation No. NOV-003-0210-SW to JMH for the violations described in paragraphs C(1) through C(2), above.

8. On March 29, 2010, Department staff met with representatives of JMH to discuss the violations.

9. Based on the results of the February 4, 2010 inspection at the City of Bristol, Virginia Integrated Solid Waste Management Facility, the March 29, 2010 meeting and documentation submitted at that meeting, the Board concludes that JMH has violated 9 VAC 20-120-210, 9 VAC 20-120-220 and 9 VAC 20-120-300, as described in paragraphs C(1) through C(6), above.

10. JMH submitted documentation at the March 29, 2010 meeting that verifies that the violations described in paragraphs C(1) through C(2), above, have been corrected. JMH officials submitted weight tickets, disposal manifests, certificates of destruction and an invoice for the two roll-offs containing the RMW mixed with contaminated solid waste. JMH officials also submitted written policies and procedures in place at JMH regarding collection and disposal of RMW, and documentation of training requirements for employees who collect and handle RMW. JMH also removed large black liners from all patient care areas, replacing them with clear liners, such that waste is visible and any improper disposal of RMW in such containers will be more likely to be quickly identified.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders JMH, and JMH agrees to pay a civil charge of $9,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

JMH shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of JMH for good cause shown by JMH, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, JMH admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. JMH consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. JMH declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by JMH to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. JMH shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. JMH shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. JMH shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which JMH intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and JMH.

11. This Order shall continue in effect until:

    a. JMH petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to JMH.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve JMH from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by JMH and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of JMH certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind JMH to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of JMH.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, JMH voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8th day of July, 2010.

Dallas R. Sizemore

Dallas R. Sizemore, Regional Director
Department of Environmental Quality

Johnston Memorial Hospital, Inc. voluntarily agrees to the issuance of this Order.

Date: MAY 18, 2010 By: Sean McMurray, VP/CEO
Sean McMurray, Administrator
Johnston Memorial Hospital, Inc.

Commonwealth of Virginia
City/County of Abingdon/Washington

The foregoing document was signed and acknowledged before me this 18TH day of May, 2010, by Sean McMurray who is VP/CEO of Johnston Memorial Hospital, Inc., on behalf of the corporation.

Donna Keen-Hale
Notary Public

306873
Registration No.

My commission expires: February 28, 2013

Notary seal: