COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VIRGINIA HOSPITAL CENTER ARLINGTON HEALTH SYSTEM
AND
ARAMARK HEALTHCARE SUPPORT SERVICES, LLC
FOR
VIRGINIA HOSPITAL CENTER
Permit By Rule No. 178

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1455(C) and (F) among the Virginia Waste Management Board and Virginia Hospital Center Arlington Health System and Aramark Healthcare Support Services, LLC regarding the Virginia Hospital Center, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable permit and/or regulations.

SECTION B: Definitions

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

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.

2. "Aramark" means Aramark Healthcare Support Services, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Aramark is a "person" within the meaning of Va. Code § 10.1-1400.

3. "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.

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

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

6. "Facility" means Virginia Hospital Center, located at 1701 North George Mason Drive, Arlington, Virginia, which is owned and operated by the Virginia Hospital Center Arlington Health System.

7. "Virginia Hospital Center" or "VHC" means Virginia Hospital Center Arlington Health System, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Virginia Hospital is a "person" within the meaning of Va. Code § 10.1-1400.

8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

9. "Permit" means Permit by Rule No. 178, which was issued by the Director to Virginia Hospital Center on May 1, 2002.

10. "Order" means this document, also known as a Consent Order.

11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

12. "RMW" means Regulated Medical Waste

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

14. "VAC" means the Virginia Administrative Code.

15. "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.

16. "VRMWR" means the Virginia Regulated Medical Waste Management Regulations, 9 VAC 20-120-10 *et seq*

17. "VSWMR" or "Regulations" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*

18. "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. The Facility is a hospital center located in Arlington, Virginia that is owned by VHC. The Facility is the subject of the Permit which authorizes VHC to use alternative treatment technology in the form of a Chem Clav unit to treat its RMW. After proper treatment of the RMW through the Chem Clav unit, the RMW may be disposed of as solid waste in a solid waste management facility. The Chem Clav unit is operated by Aramark.

2. 9 VAC 20-120-50(A) states that the VRMWR "...applies to all persons who manage medical waste, own or operate regulated medical waste management facilities..."

3. 9 VAC 20-120-640(1)(B) requires that all "[a]lternative treatment units shall be evaluated under full loading for effectiveness with spores of B. stearothermophilus or B. subtilis no less than once per month." In compliance with this regulation, VHC and Aramark conduct effectiveness testing which evaluates the efficacy of the treatment provided by the Chem Clav unit.

4. DEQ staff conducted inspections at the Facility on November 3 and November 20, 2008. Aramark provided documentation that showed on multiple occasions, the Chem Clav unit failed the required effectiveness evaluation. Aramark and VHC were unable to provide documentation showing that on these occasions the waste was properly managed and disposed of as RMW. The improper handling and disposal of RMW has the potential to endanger health or the environment. In addition, Aramark and VHC failed to notify DEQ regarding these instances of failure.

5. VHC and Aramark failed to provide documentation demonstrating that the waste had been properly transported and disposed of after the failed effectiveness testing, therefore, DEQ has reason to believe that the RMW was disposed of in a solid waste management site.

6. 9 VAC 20-120-300(A) requires that "[a]ll regulated medical waste must be incinerated, sterilized by steam, or treated by a method as described in Part ... IX (9 VAC 20-12-630 *et seq.*)..."

7. 9 VAC 20-120-650(C) requires that "...Regulated medical waste not treated in accordance with this chapter shall not be transported, received for transport or disposal, or disposed of in any solid waste management facility."

8. 9 VAC 20-120-760(C)(3) requires that "The permittee shall report to the department any noncompliance or unusual condition that may endanger health or environment."

9. Based on these inspections and review of documentation, DEQ issued a NOV to VHC on December 11, 2008 for the violations described above.

10. DEQ staff conducted a follow-up inspection on March 9, 2009 and again found instances of failed effectiveness tests and no proper disposal records for those associated events. Based on the evidence of continued violations, DEQ issued another NOV to VHC on April 3, 2009 for violations of the above citations.

11. Based on the foregoing, the Board concludes that VHC as the owner, and Aramark as the operator have violated 9 VAC 20-12-300; 9 VAC 20-120-650(C); and 9 VAC 20-120-760(C)(3) as noted above and are therefore jointly and severally liable.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455(C) and (F), the Board orders Virginia Hospital Center and Aramark, jointly and severally, and Virginia Hospital Center and Aramark, jointly and severally, agree to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $93,758.00 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

Virginia Hospital Center and Aramark shall include their Federal Identification Numbers (FEINS) 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 Virginia Hospital Center and Aramark for good cause shown by Virginia Hospital Center and Aramark, or on its own motion pursuant to the Administrative Process Act 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, Virginia Hospital Center and Aramark admit to the jurisdictional allegations, and agree not to contest, but neither admits nor denies, the findings of fact, and conclusions of law contained herein.

4. Virginia Hospital Center and Aramark consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Virginia Hospital Center and Aramark declare they have received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and they waive 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 Virginia Hospital Center or Aramark 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. Virginia Hospital Center and Aramark 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. Virginia Hospital Center and Aramark shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Virginia Hospital Center and Aramark 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 the Virginia Hospital Center and Aramark intend 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 Virginia Hospital Center and Aramark. Nevertheless, Virginia Hospital Center and Aramark agree to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    (a) Virginia Hospital Center and Aramark petition 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 Virginia Hospital Center and Aramark.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Virginia Hospital Center and Aramark from their 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 Virginia Hospital Center and Aramark 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 Virginia Hospital Center and Aramark certify 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 Virginia Hospital Center and Aramark to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Virginia Hospital Center and Aramark.

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, Virginia Hospital Center and Aramark voluntarily agree to the issuance of this Order.

And it is so ORDERED this 5th day of October, 2009.

Thomas A. Faha

Thomas A. Faha, Regional Director
Department of Environmental Quality

Virginia Hospital Center voluntarily agrees to the issuance of this Order.

Date: 8-21-09 By: _____, EVP/COO
(Person) (Title)
Virginia Hospital Center

Commonwealth of Virginia
City/County of Arlington

The foregoing document was signed and acknowledged before me this 21 day of August, 2009, by Carl Bahnlein who is EVP + COO of Virginia Hospital Center, on behalf of the corporation.

JULISSA SANTOS-URENA
NOTARY PUBLIC
REG # 7224165
COMMISSION EXPIRES 2/29/2012
COMMONWEALTH OF VIRGINIA

_____
Notary Public

_____
Registration #

My commission expires: 2/29/12

Notary seal:

Aramark voluntarily agrees to the issuance of this Order.

Date: 8/25/09 By: Kirk Wall, CFO
(Person) (Title)

ARAMARK Healthcare Support Services,LLC

Commonwealth of ~~Virginia~~ Pennsylvania
City/County of Philadelphia

The foregoing document was signed and acknowledged before me this 25th day of August, 2009, by Kirk Wall who is CFO and Vice President of Aramark, on behalf of the corporation.

Marien Campos
Notary Public

120444
Registration No.

My commission expires: March 20, 2012

Notary seal:

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
MARIEN CAMPOS, Notary Public
City of Philadelphia, Phila. County
My Commission Expires March 20, 2012

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Virginia Hospital Center and Aramark shall submit to DEQ no later than October 1, 2009 the following documents:

   a. Notice of Intent in accordance with 9 VAC 20-120-710 to amend its PBR to incorporate documents required by paragraphs 1.b through 1.f of the Schedule of Compliance. Said notice shall include the precise location and intended use of the facility; a revised Disclosure Statement for all key personnel; a key map and near-vicinity map in accordance with 9 VAC 20-120-720(C) and (D); and a copy of the lease or deed indicating ownership of the hospital

   b. Certification that the facility meets standards of Part IX of the Regulations (*9 VAC 20-12-630 et seq*). Said certification shall be signed by an authorized representative of Virginia Hospital Center;

   c. Operations Plan in accordance with 9 VAC 20-120-730(A) and (B) and 9 VAC 20-120-640;

   d. Emergency Contingency Plan in accordance with 9 VAC 20-120-730(C). Said plan shall require notification of waste haulers and landfill recipient in cases of failed efficacy tests as well as notification of DEQ as stated in 9 VAC 20-120-760(C);

   e. Closure Plan in accordance with 9 VAC 20-120-730(D);

   f. Revised closure cost estimate that at a minimum includes costs for removal of untreated waste and decontamination/decommissioning of the Chem Clav unit and an updated Financial Assurance mechanism to reflect the revised costs.

2. Virginia Hospital Center and Aramark shall submit Chem Clav effectiveness testing results to DEQ weekly. If said results indicate failed effectiveness testing, Virginia Hospital Center and Aramark shall submit associated records of proper disposal as RMW. Virginia Hospital Center and Aramark shall continue to submit this documentation on a weekly basis until otherwise notified by DEQ to cease reporting.

3. Virginia Hospital Center and Aramark shall properly treat and dispose of all regulated medical waste in a manner that complies with 9 VAC 20-120-10 *et seq.*

All documents required by this Order, with the exception of Section D shall be submitted to:

VA Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193