COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO THE UNITED STATES DEPARTMENT OF VETERAN AFFAIRS FOR THE HUNTER HOLMES MCGUIRE VETERANS AFFAIRS MEDICAL CENTER EPA ID No. VA3360010323

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 the United States Department of Veteran Affairs for the Hunter Holmes McGuire Veteran's Affairs (VA) Medical Center, in order to resolve certain 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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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

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

5. "Facility" or "Site" means the Hunter Holmes McGuire Veteran's Affairs (VA) Medical Center located at 1201 Broad Rock Boulevard in Richmond, Virginia.

6. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

7. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

8. "McGuire VAMC" means Hunter Holmes McGuire Veteran's Affairs (VA) Medical Center, a political subdivision of the United States Department of Veteran Affairs. McGuire VAMC is a "person" within the meaning of Va. Code § 10.1-1400.

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

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

11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

12. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.

13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

14. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).

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

16. "VAC" means the Virginia Administrative Code.

17. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. McGuire VAMC is a full-service healthcare Facility providing primary, secondary, and tertiary health care in medicine, surgery, neurology, rehabilitation medicine, intermediate care, acute and sustaining spinal cord injury, nursing home care, and palliative care for United States veterans. The Facility is also a medical research center, one of six national Parkinson's Disease Research, Education and Clinical Center (PADRECC) host sites. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. McGuire VAMC submitted a RCRA Subtitle C Site Identification Form on September 24, 2009, that gave notice of regulated waste activity at the Facility as an SQG of hazardous waste. McGuire VAMC was issued EPA ID No. VA3360010323 for the Facility.

3. McGuire VAMC generates a number of solid waste types that are hazardous at this Facility including: unused/expired pharmaceutical containers and container residues of Warfarin (Coumadin), arsenic trioxide, nicotine, physostigmine, oxazaphosphorin, and phenol P001, P012, P075 , P204, U058, U188; laboratory, spent solvents (xylene, methanol other alcohols) and reagents, oxidizers, peroxides, corrosives including acids and bases D001, D002, F001, F003, F005; acrylamide, ethylene oxide(currently decommissioned and currently using hydrogen peroxide for sterilization), formaldehyde, hydrofluoric acid, and urethane laboratory, equipment sterilization U007, U115, U122, U134, U238; Chemotherapy wastes U010, U035, U058, U059, U150, U206; Chloroform U044; diethyl ether U117; and, aerosols, general Facility maintenance D001, D003. This hazardous waste is accumulated in containers at the Facility after its generation.

4. On June 6, 2013, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

    a. According to McGuire VAMC staff the Facility conducts weekly inspections of the 180-day hazardous waste (HW) accumulation area, however the weekly inspection records of the HW accumulation area were not available for review at the time of the inspection.

    Title 40 of the Code of Federal Regulations (CFR) 40 CFR 262.34(d) states... A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that...:(2) The generator complies with the

requirements of subpart I of part 265 of this chapter, except for §§ 265.176 and 265.178.

40 CFR 265.174 states…At least weekly, the owner or operator must inspect areas where containers are stored…The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

40 CFR §265.15(d) requires that the owner or operator record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

b. During the inspection, DEQ staff observed and documented a hazardous waste satellite accumulation area (SAA) located in the Facility pharmacy that contained a full 1 quart container labeled "P" and "Hazardous Waste" and one overflowing 5 gallon container labeled "Hazardous Waste". The containers were not marked with the date the excess amount began accumulating. Based on the inspection findings, the Facility had exceeded the accumulation amount and labeling requirements for the hazardous waste satellite accumulation area.

40 CFR 262.34(c)(1) states A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 261.33(e) 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 paragraph 9a) of this section provided he:…(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter. During the three day period the generator must continue to comply with paragraphs (c)(1)(i) through (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

c. At the time of the inspection, DEQ Facility requested a copy of training documentation for those Facility staff responsible for hazardous waste management. The training documentation was not provided to DEQ staff during the inspection. Documentation was provided on August 20, 2013 which indicated certain staff, including pharmacy staff, had not been given proper hazardous waste training.

40 CFR 262.34(d) states A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that... (5) The generator complies with the following requirements...(iii) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

d. At the time of the inspection, Facility staff stated that the Facility operates a bulb crusher to manage Universal Waste Lamps. The Facility did not provide documentation during the inspection to demonstrate that the bulb crusher was compliant with 9 VAC 20-60-273.B.3.c.

9 VAC 20-60-273(B)(3)(c) states... The crusher must have documentation from the manufacturer that demonstrates that the unit: (a) Is capable of achieving the Occupational Safety and Health Administration Permissible Exposure Limit (PEL) for mercury of 0.10 milligram per cubic meter in indoor ambient air (under individual site-specific use conditions); and (b) Achieves a particle retention rate of 99.97% in the HEPA filter (at a particle diameter of 0.3 microns). (2) The handler must develop and implement a written procedure specifying how to safely crush universal waste lamps. This procedure must include: type of equipment to be used to crush the lamps safely, operation and maintenance of the unit in accordance with written procedures developed by the manufacturer of the equipment, and proper waste management practices. The handler must document maintenance activities and keep records of maintenance. In addition, the unit operator must receive training in crushing procedures, waste handling and emergency procedures (training must be documented).

e. At the time of the inspection, DEQ staff observed nine securely-closed cardboard boxes in the Facility maintenance area. Facility staff stated the boxes contained Universal Waste (UW) Lamps. DEQ observed and documented that one of the boxes was labeled as "Universal Waste---Lamps" with an accumulation start date of June 21, 2012. DEQ staff noted that two other boxes were marked as "Hazmat Bulbs" with no accumulation start date. The remaining boxes were unlabelled. At the time of the inspection, the Facility did not appear to have implemented a system for monitoring the on-site accumulation time period of Universal Waste.

40 CFR 273.14(e) states each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste---Lamp(s)," or "Waste Lamp(s)," or "Used Lamps(s)".

40 CFR 273.15(c) 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.

5. On July 12, 2013, based on the inspection and follow-up information, the Department issued Notice of Violation No. 2013-07-PRO-601 to the McGuire VAMC for the violations described in Section C6 above.

6. On August 20, 2013, Department staff met with representatives of McGuire VAMC to discuss the violations cited in the NOV.

7. On April 21, 2014, the Department sent a draft Consent Order to McGuire VAMC for review. On May 30, 2014, McGuire VAMC responded to the draft Order and submitted documentation that resolved the violations described in Section C 4a and C4c-C4e.

8. On June 10, 2014, Department staff met with representatives of McGuire VAMC to discuss the draft Consent Order. McGuire VAMC stated that they have historically handled used insulin bottles as hazardous waste; however, during the meeting McGuire VAMC stated that it did not agree with the Department's contention that the empty insulin bottles needed to be handled as hazardous waste. McGuire VAMC stated that they were utilizing the November 4, 2011, EPA Guidance Memo entitled *Container that once held p-listed Pharmaceuticals*, which states that only the residue and not the container is counted toward the 1 quart (1kg) maximum amount. McGuire VAMC staff described a procedure that appears to meet one of the three requirements in the EPA guidance memo and the Department asked McGuire VAMC to develop a formal written description of the procedure that would be kept on site with a log so that future inspectors will be able to confirm compliance. McGuire VAMC agreed to this request and to continue to handle the empty insulin bottles as hazardous waste. McGuire VAMC decided to discontinue its use and to hire a third party contractor to pick up and dispose of its universal waste lamps.

9. Based on the results of the June 6, 2013 inspection, the August 20, 2013 and June 20, 2014 meetings, and the documentation submitted on August 20, 2013 and May 30, 2014, the Board concludes that McGuire VAMC has violated 40 CFR 265.15(d), 40 CFR 262.34(c)(1), 40 CFR 262.34(c)(2), 40 CFR 262.34(d)(5)(iii), 9 VAC 20-60-273(B)(3)(c)(1), 9 VAC 20-60-273(B)(3)(c)(2), 40 CFR 273.14(e), and 40 CFR 273.15(c) as described in Section C4 above.

10. In order for McGuire VAMC to complete its return to compliance, DEQ staff and representatives of McGuire VAMC have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders McGuire VAMC, and McGuire VAMC agrees to:

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

2. Pay a civil charge of $11,112 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

McGuire VAMC 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, McGuire VAMC shall be liable for attorneys' fees of $4,523.00.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of McGuire VAMC for good cause shown by McGuire VAMC, 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, McGuire VAMC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein

4. McGuire VAMC acknowledges that any civil action taken by the Board to enforce the terms of this Order will be in the Circuit Court of the City of Richmond. McGuire VAMC does not waive any rights it may have to seek removal of such action to federal court pursuant to 28 U.S.C. § 1441 *et seq.*

5. McGuire VAMC 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 McGuire VAMC 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. McGuire VAMC 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. McGuire VAMC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. McGuire VAMC 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 McGuire VAMC

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 McGuire VAMC.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after McGuire VAMC has completed all of the requirements of the Order;

    b. McGuire VAMC 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

    c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to McGuire VAMC.

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

12. In accordance with the Federal Anti-Deficiency Act, the obligations of the McGuire VAMC under this section are expressly conditioned on the availability of Congressional appropriations, which the McGuire VAMC agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the McGuire VAMC will promptly inform the DEQ Regional Director. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with McGuire VAMC consent or in accordance with the Administrative Process Act.

13. Any plans, reports, schedules or specifications attached hereto or submitted by McGuire VAMC 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.

14. The undersigned representative of McGuire VAMC 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 McGuire VAMC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of McGuire VAMC.

15. 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.

16. By its signature below, McGuire VAMC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

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Hunter Holmes McGuire Veteran's Affairs (VA) Medical Center voluntarily agrees to the issuance of this Order.

Date: 9/26/14 By: John A. Brandecker, DIRECTOR
(Person) (Title)
Hunter Holmes McGuire Veteran's Affairs (VA) Medical Center

Commonwealth of Virginia
City/County of Richmond

The foregoing document was signed and acknowledged before me this 26th day of September, 2014, by John A. Brandecker who is Director of Hunter Holmes McGuire Veteran's Affairs (VA) Medical Center, on behalf of the United States Department of Veteran Affairs.

Kathryn R Lange
Notary Public

340672
Registration No.

My commission expires: 2/29/2016

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Pharmacy Waste

   On or before August 1, 2014, McGuire VAMC shall develop written procedures demonstrating that the handling of hazardous wastes generated in the pharmacy area is compliant with 40 CFR § 262.34(c)(1) by choosing one of the three methods outlined in the November 4, 2011, EPA guidance memo. McGuire VAMC shall submit the procedures to the Department for review and comment, and shall respond and make adjustments regarding the procedure within 10 days from receiving comments from the Department. McGuire VAMC shall maintain a copy of the Department approved method and calculation records on site for future inspectors.

2. Universal Waste

   On or before August 1, 2014, McGuire VAMC shall submit to the Department formal written procedures, in accordance with 40 CFR §273.15(c), for tracking the accumulation of universal waste lamps.

3. Contact

   Unless otherwise specified in this Order, McGuire VAMC shall submit all requirements of Appendix A of this Order to:

   Frank Lupini
   Enforcement Specialist
   VA DEQ –Piedmont Regional Office
   4949A Cox Road,
   Glen Allen, Virginia 23060
   Frank.Lupini@deq.virginia.gov