COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO PULASKI COMMUNITY HOSPITAL, INC. D.B.A. LEWIS GALE HOSPITAL - PULASKI EPA ID No. VAD988188637

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 Pulaski Community Hospital, Inc., for the purpose of resolving 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. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.

2. "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.

3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

4. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-80-120(A).

5. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

6. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled, as defined by 40 CFR § 260.10.

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

8. "Designated Facility" means (1) A hazardous waste treatment, storage, or disposal facility which: (i) has received a permit (or interim status) in accordance with the requirements of 40 CFR Parts 270 and 124; (ii) has received a permit (or interim status) from a State authorized in accordance with 40 CFR Part 271; or (iii) is regulated under 40 CFR § 261.6(c)(2) or 40 CFR § 266, Subpart F; and (iv) that has been designated on the manifest by the generator pursuant to 40 CFR § 262.20.

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

10. "Facility" or "Site" means the PCH facility, located at 2400 Lee Highway, Pulaski, Virginia.

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

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

13. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).

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

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

16. "PCH" means the Pulaski Community Hospital, Inc. (d/b/a Lewis Gale Hospital – Pulaski), a company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Pulaski Community Hospital, Inc. is a "person" within the meaning of Va. Code § 10.1-1400.

17. "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 effective 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.

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

19. "Storage" means the holding of solid or hazardous waste for a temporary period, at the end of which the waste is treated, disposed of, or stored elsewhere, as defined by 40 CFR § 260.10 and 9 VAC 20-81-10, as applicable.

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

21. "VAC" means the Virginia Administrative Code.

22. "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. PCH owns and operates the Facility, at which PCH generates hazardous waste. PCH is located at 2400 Lee Highway, Pulaski, Virginia. PCH is a hospital serving the Pulaski area. Operations at this site are subject to the Virginia Waste Management Act and the Regulations.

2. PCH submitted a RCRA Subtitle C Site Identification Form dated November 27, 1990 that gave notice of regulated activity at the Facility as a CESQG of hazardous waste. PCH was issued EPA ID No. VAD988188637 for the Facility. PCH submitted a RCRA Subtitle C Site Identification Form dated November 7, 2011 that gave notice of regulated waste activity at the Facility as a LQG of hazardous waste and a transporter of used oil.

3. Hazardous wastes generated at the Facility include wastes with the following waste codes: D005, D008, D009, K046, K071, P0001, P075, P081, U010, U150, U188, U200, U248, as described in 40 CFR § 261.21. These hazardous wastes are accumulated in containers at the Facility after generation.

4. On August 9, 2013, DEQ-BRRO staff inspected PCH for compliance with the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, the Department mad the following observations:

    a. A used oil container in a small storage shed was not labeled with the words "Used Oil".

b. The Facility is a LQG and did not file a biennial hazardous waste report for 2011 (due March 1, 2012).

c. One container of spent fluorescent lamps (a universal waste) was not closed.

d. Not all manifests for the period 2010-2011 were available.

e. Terminated manifests were missing from six shipments over the period 2012-2013 and there was no evidence of exception reports having been filed.

f. One Land Disposal Restriction ("LDR") form was not signed or dated; two LDR forms were not signed; one LDR form was dated but not signed.

5. 40 CFR § 279.22(c)(1) requires that containers used to store used oil a generator facilities must be labeled or marked clearly with the words "Used Oil.".

6. 40 CFR § 262.41 requires owners and operators (including large quantity generators) to submit a biennial report by March 1 of each even numbered year.

7. 40 CFR § 273.13(d)(1) requires that a generators of universal waste contain any lamp in containers or packages that . . . must remain closed.

8. 40 CFR § 262.40(a) requires that generators keep a copy of each manifest signed in accordance with 40 CFR § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

9. 40 CFR § 262.42(a) requires that a large quantity generator must (1) contact the transporter and/or the owner of the designated facility to determine the status of the hazardous waste if the generator does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter, and (2) submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter.

10. 40 CFR § 268.7(a)(9)(i) requires that with the initial shipment of waste to a treatment facility, the generator must submit a notice that provides the information in column "§ 268.7(a)(9)" in the Generator Paperwork Requirements Table of paragraph (a)(4) of this section, and [a] certification . . . which must be signed by an authorized representative and must be placed in the generator's files.

11. On October 2, 2013, based on the inspection and follow-up information, the Department issued NOV No. NOV-13-10-BRRO-001 to PCH for the violations described in Paragraphs C(5) through C(10) above.

12. In a phone call on October 8, 2013, Department staff discussed the violations with representatives of PCH.

13. On October 18, 2013, PCH submitted a written response to the NOV. This written response was supplemented on October 22, 2013.

14. Based on the results of the August 9, 2013 inspection, the October 8, 2013 phone call, and the documentation submitted by PCH, the Board concludes that PCH has violated 40 CFR § 279.22(c)(1), 40 CFR § 262.41, 40 CFR § 273.13(d)(1), 40 CFR § 262.40(a), 40 CFR § 262.42(a), 40 CFR § 268.7(a)(9)(i), as described in paragraph C(5), above.

15. PCH has submitted documentation that verifies that the violations described in paragraphs C(5) through C(10), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Pulaski Community Hospital, Inc., and Pulaski Community Hospital, Inc. agrees to pay a civil charge of $8,470.00 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

Pulaski Community Hospital, Inc. shall include its Federal Employer Identification Number (FEIN) (54-0941129) 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 PCH for good cause shown by PCH, 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, PCH admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. PCH 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. PCH declares that 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 PCH 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. PCH 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. PCH shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. PCH 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 PCH 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 PCH.

11. This Order shall continue in effect until:

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

    b. PCH 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 PCH.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve PCH 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 PCH 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 PCH 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 PCH to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of PCH.

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, PCH voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20____.

_____
Robert J. Weld, Regional Director
Department of Environmental Quality

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Pulaski Community Hospital, Inc. voluntarily agrees to the issuance of this Order.

Date: 12/27/13 By: Bob Suddarth

Commonwealth of Virginia
~~City~~/County of Pulaski

The foregoing document was signed and acknowledged before me this 27th day of December, 2013, by Bob Suddarth.

Lori Y. Newman
Notary Public

288371
Registration No.

My commission expires: 4/30/16

Notary seal:

LORI Y. NEWMAN
NOTARY PUBLIC
REG. #288371
MY COMMISSION EXPIRES 4/30/16
COMMONWEALTH OF VIRGINIA