COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ROCKINGHAM MEMORIAL HOSPITAL EPA ID No. VAR000518001

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 Rockingham Memorial Hospital 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. "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 Rockingham Memorial Hospital Facility located at 2010 Health Campus Drive in Harrisonburg, 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. "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).

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. "RCRA" means the Resource Conservation and Recovery Act, enacted in 1976.

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 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.

13. "RMH" means Rockingham Memorial Hospital, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. RMH is a "person" within the meaning of Va. Code § 10.1-1300.

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

15. "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).

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

17. "VAC" means the Virginia Administrative Code.

18. "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.

19. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. RMH owns and operates the Facility located at 2010 Health Campus Drive in Harrisonburg, Virginia. The Facility is a hospital. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. RMH submitted a RCRA Subtitle C Site Identification Form (received 8/21/09) that gave notice of regulated waste activity at the Facility as an SQG of hazardous waste and a Small Quantity Handler of Universal Waste. RMH was issued EPA ID No. VAR000518001 for the Facility.

3. At the Facility, RMH generates the following solid wastes which are also hazardous wastes. Each waste is listed with associated waste codes as described in 40 CFR § 261.24 and 261.31. This hazardous waste is accumulated in containers at the Facility after its generation.

   Petroleum Distillates, xylene: D001, F003
   Mitomycin Methotrexate: U010
   Peroxyacetic Acid: D001
   Mercury: D009

4. On June 17, 2013, DEQ 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. On June 12, 2013, RMH generated about 335 gallons of xylene waste in eight, 55 gallon containers. The weight of this waste is estimated to be greater than 1,000 kg. Based on the 335 gallons of xylene waste that were generated on June 12, 2013, RMH generated hazardous waste volumes in excess of the amounts allowed under SQG status. The Facility did not notify DEQ of its change in generator status and did not submit the associated annual fee. No evidence exists that, after becoming a LQG, the facility complied with regulatory requirements for preparedness and prevention or contingency plan and emergency procedures. DEQ was not notified of the waste accumulation locations.
   b. Universal Waste (lamps), located in the hazardous waste storage area, were not stored in a closed container.
   c. Waste lamps containers were not appropriately labeled.
   d. Waste lamps containers were not labeled with the date they became a waste.

5. 40 CFR 262.34(a) states that "Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that…(4) The generator complies with

the requirements for owners or operators in subparts C and D in 40 CFR part 265, with §265.16, and with all applicable requirements under 40 CFR part 268.

6. 40 CFR 265 Subpart C as referenced in 9 VAC 20-60-265 of the VHWMR details requirements for Preparedness and Prevention.

7. 40 CFR 265 Subpart D as referenced in 9 VAC 20-60-265 of the VHWMR details requirements for Contingency Plans and Emergency Procedures.

8. 9 VAC 20-60-262(B)(4) states that "...In the case of a new generator who creates such accumulation areas after March 1, 1988, he shall notify the department at the time the generator files the Notification of Hazardous Waste Activity that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34. This notification shall specify the exact location of the accumulation area at the site."

9. 9 VAC 20-60-1260(B) requires that each large quantity generator of hazardous waste shall be assessed an annual fee as shown in 9 VAC 20-60-1285 G to be paid in accordance with 9VAC 20-60-1280.

10. 9 VAC 20-60-315(D) requires that "Anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record..."

11. 40 CFR 273.13(d)(1) as referenced in 9 VAC 20-60-273 of the VHWMR requires that "A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions."

12. 40 CFR 273.14(e) as referenced in 9 VAC 20-60-273 of the VHWMR requires that "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 Lamp(s)".

13. 40 CFR 273.15(c) as referenced in 9 VAC 20-60-273 of the VHWMR requires that "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..."

14. On July 17, 2013, DEQ issued Notice of Violation (NOV) No. 13-07-VRO-001 to RMH for the violations listed in paragraphs C(4) through C(13), above.

15. On August 13, 2013, DEQ staff met with Facility representatives to discuss the NOV. The facility representatives stated that, due to operator error, the xylene waste was improperly routed to a tank which is normally used for neutralization of laboratory waste

prior to discharge to the sanitary sewer which discharges to the Harrisonburg-Rockingham Regional Sewer Authority municipal treatment facility. The Facility generated about 335 gallons of xylene waste in eight 55 gallon containers from the cleanout of this hazardous waste tank. The waste separated into two phases in each drum and the solvent (xylene) phase was treated at the Facility by decanting. The concentrated solvent phase was shipped offsite to a hazardous waste treatment facility and the aqueous phase was discharged to the sanitary sewer. The facility provided photos showing that appropriate universal waste containers and labels were in use. Additional documentation was submitted electronically on August 16, 2013. On August 19, 2013, DEQ staff reviewed this additional information and made the following observations:

a. The facility performed treatment of hazardous waste, without a permit issued by DEQ.

b. The facility utilized a tank for treatment of hazardous waste that was not designed for use as a hazardous waste tank. Since the tank was not intended for use as a hazardous waste treatment tank, the requirements for design, installation, secondary containment and routine inspections were not addressed by the Facility.

16. Va. Code § 10.1-1426.A states that "No person shall transport, store, provide treatment for, or dispose of a hazardous waste without a permit from the Director."

17. 40 CFR 265 Subpart J as referenced in 9 VAC 20-60-265 of the VHWMR states that "The requirements of this subpart apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in paragraphs (a), (b), and (c) of this section or in § 265.1 of this part..."

18. On September 24, 2013, DEQ issued Notice of Violation (NOV) No. 13-09-VRO-001 to RMH for the violations listed in paragraph C(15) through C(17), above.

19. Based on the results of the June 17, 2013 inspection, the August 13, 2013 meeting and the additional information submitted on August 16, 2013, the Board concludes that RMH has violated 40 CFR 262.34(a)4, 9 VAC 20-60-262(B)(4), 9 VAC 20-60-1260(B), 9 VAC 20-60-315(D), 40 CFR 273.13(d)(1), 40 CFR 273.14(e), 40 CFR 273.15(c), Va. Code § 10.1-1426(A), 40 CFR 265 Subpart J, 40 CFR 265 Subpart C and 40 CFR 265 Subpart D as described in paragraphs C(4) through C(13), and C(15) through C(17) above.

20. In order for RMH to complete its return to compliance, DEQ staff and representatives of RMH 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 RMH, and RMH agrees to:

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

2. Pay a civil charge of $15,662 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

RMH shall include its Federal Employer Identification Number, 54-0506331, 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, RMH shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of RMH for good cause shown by RMH, 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 and in NOV No. 13-07-VRO-001 dated July 17, 2013 and NOV No. 13-09-VRO-001 dated September 24, 2013. 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, RMH admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. RMH consents to venue in the Circuit Court of the County of Rockingham for any civil action taken to enforce the terms of this Order.

5. RMH 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 RMH 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. RMH 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. RMH shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. RMH 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 parties 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 and any 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 RMH. Nevertheless, RMH agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

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

    b. RMH 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 RMH.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve RMH 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 RMH 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 RMH certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind RMH to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of RMH.

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, RMH voluntarily agrees to the issuance of this Order.

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

_____
Amy T. Owens, Regional Director
Department of Environmental Quality

Rockingham Memorial Hospital voluntarily agrees to the issuance of this Order.

Date: DEC 19, 2013 By: _____, _____
James D. Krauss President and CEO
Rockingham Memorial Hospital

Commonwealth of Virginia
~~City/~~County of Rockingham

The foregoing document was signed and acknowledged before me this 19th day of December, 2013, by James D. Krauss who is President + CEO of Rockingham Memorial Hospital, on behalf of the company.

Pamela S. Sherman
Notary Public

3175563
Registration No.

My commission expires: 9/30/2015

Notary seal:

PAMELA S. SHERMAN
NOTARY PUBLIC
REG # 317563
MY COMMISSION EXPIRES 9/30/2015
COMMONWEALTH OF VIRGINIA

APPENDIX A

SCHEDULE OF COMPLIANCE

1) **LQG Notification and Fee Payment**

a) Within 30 days of the effective date of this Order, RMH shall submit notification as an LQG on EPA Form 8700-12 in accordance with 9 VAC 20-60-315(D).

b) Within 30 days of the effective date of this Order, RMH shall submit the annual fee as shown in 9 VAC 20-60-1285 G to be paid in accordance with 9VAC 20-60-1280.

c) Within 30 days of the effective date of this Order, RMH shall submit to DEQ the exact location/s of the accumulation area/areas at the Facility.

d) Within 15 days of completion of the items in (a), (b) and (c) above, submit confirmation of completion to the Contact listed below.

2) **Contact**

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

Karen Hensley
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
4411 Early Road
P.O. Box 3000
(540) 574-7821 - phone
(540) 574-7878 - fax
karen.hensley@deq.virginia.gov