



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

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Director

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Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
RIVERSIDE MIDDLE PENINSULA HOSPITAL, INC.
FOR
RIVERSIDE WALTER REED HOSPITAL
EPA ID VAD988204988**

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 Riverside Middle Peninsula Hospital, Inc. d/b/a Riverside Walter Reed Hospital, for the purpose of resolving violations of the Virginia Waste Management Act and the 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. "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 20-81-10.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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 Riverside Walter Reed Hospital (EPA ID VAD988204988), located at 7519 Hospital Drive, Gloucester, Virginia, which is owned and operated by Riverside Middle Peninsula Hospital, Inc.
7. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "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 of section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMA. Citations to independent Virginia Requirements are made directly to the VHWMR.
12. "Riverside" means Riverside Middle Peninsula Hospital, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Riverside is a "person" within the meaning of Va. Code § 10.1-1400.
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. Riverside owns and operates the Facility in Gloucester, Virginia. The Facility is a 67-bed medical/surgical and acute care hospital. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. Riverside submitted to EPA a RCRA Subtitle C Site Identification Form, received by EPA on September 6, 1991, that gave notice of regulated waste activity at the Facility as a SQG of hazardous waste. Riverside was issued EPA ID No. VAD988204988 for the Facility.
3. At the Facility, Riverside generates pharmaceutical waste and used aerosol cans, which are a solid waste. Pharmaceutical waste and used aerosol cans are also a hazardous waste, which are generated during pharmaceutical dispensing when pharmaceutical products are discarded and are a commercial chemical product listed in 40 CFR 261.33(e) and (f), a substance that is P or U listed, or another hazardous waste characteristically listed as a D-coded hazardous waste. The used aerosol cans are a D003 and D001 code characteristic waste, which means they are a reactive and ignitable waste, respectively. The pharmaceutical wastes that include warfarin tablets, containers that once held warfarin, nicotine products, insulin vials, and other discarded pharmaceuticals are either characteristic or P or U listed as hazardous. This hazardous waste is accumulated in containers at the Facility after its generation.
4. On June 24, 2015, Department staff inspected the Facility for compliance with the requirements of the Virginia Hazardous Waste Management Regulations. Based on the inspection and follow-up information, Department staff made the following observations:
 - a. Facility staff stated that there was no hazardous waste management program in place at the facility and no hazardous waste determinations had been conducted on the waste streams generated at the Facility, including [but not limited to] pharmaceutical waste and used aerosol cans; Facility staff stated used aerosol cans were discarded in the general trash; Facility staff stated pharmaceutical waste including warfarin (Coumadin) tablets, containers that once held warfarin, nicotine products, insulin vials,

and other pharmaceuticals that when discarded are either characteristic or listed hazardous waste pursuant to Title 40 of the CFR Parts 261.21 through 261.24 and 261.33(e) and (f) were either disposed of in the general trash or with regulated medical waste.

40 CFR Part 262.11 states: A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method:..... (d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 267, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

40 CFR 261.5(f)(1) as adopted by [9 VAC 20-60-261] state: In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraphs (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements: Section 262.11 of this chapter.

40 CFR 261.5(g)(1) as adopted by [9 VAC 20-60-261] states: In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements: Section 262.11 of this chapter.

- b. No documentation was available to indicate that hazardous waste, specifically pharmaceutical waste and used aerosol cans, was shipped to an authorized facility.

40 CFR Part 261.5(f)(3) and 40 CFR 261.5(g)(3) states: (3) a conditionally exempt small quantity generator may either treat or dispose of his acute [or non-acute] hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is: ...iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Part 258 of this chapter.

5. On September 14, 2015, DEQ issued Notice of Violation (NOV) No. 2015-09-PRO-603 to Riverside for the Facility for the violations described in paragraph C(4), above.
6. On September 29, 2015, DEQ met with representatives of Riverside to discuss hazardous waste regulations and the violations observed by DEQ staff at the Riverside Walter Reed Hospital.

7. On October 23, 2015, Riverside submitted a written response to the violations cited in the NOV. Riverside stated that the corporation had: 1) entered into a contract with Curtis Bay to dispose of hazardous pharmaceutical waste; 2) the pharmacy completed a full hazardous waste assessment and identified P-List waste and U-List waste and implemented a segregation program; 3) placed containers on all nursing units to dispose of targeted drugs; 4) trained the immediate staff in direct contact with the acutely hazardous waste as to the proper methods of separating medical waste; and 5) the pharmacy worked to develop and implement by November 1, 2015, a system wide education platform to ensure all staff are properly re-educated on waste disposal.
8. Based on the results of the June 24, 2015 inspection and the September 29, 2015 meeting, the Board concludes that Riverside has violated 40 CFR Part 262.11, 40 CFR 261.5(f)(1), 40 CFR 261.5(f)(3), 40 CFR 261.5(g)(1), and 40 CFR 261.5(g)(3), as described in paragraph C(4), above.
9. In order for Riverside to complete its return to compliance, DEQ staff and Riverside have agreed to the Schedule of Compliance, which is incorporated in 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 Riverside, and Riverside agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$ 89,250** 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 cashiers check payable to the "Treasurer of Virginia" and shall be delivered to:

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

Riverside 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, Riverside shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Riverside for good cause shown by Riverside, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-400 *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, Riverside admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Riverside 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. Riverside declares it has received fair and due process under the Administrative Process Act and 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 Riverside 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. Riverside 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 other such occurrences. Riverside shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Riverside 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 Riverside 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 Riverside. Nevertheless, Riverside 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 Riverside has completed all of the requirements of the Order.
 - b. Riverside 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 Riverside.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Riverside 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 Riverside 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 the Order.

13. Any documents to be submitted pursuant to this Order shall also be submitted by Riverside or an authorized representative of Riverside.
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, covenant, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Riverside Middle Peninsula Hospital, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2016.

Michael P. Murphy, Regional Director
Department of Environmental Quality

Riverside Middle Peninsula Hospital, Inc. voluntarily agrees to the issuance of this Order.

Date: 7/13/16 By: W. William Austin, Jr., S. VP + CFO
(Person) (Title)
Riverside Middle Peninsula Hospital, Inc.

Commonwealth of Virginia
City/County of Newport News

The foregoing document was signed and acknowledged before me this 13th day of
July, 2016, by W. William Austin, Jr. who is

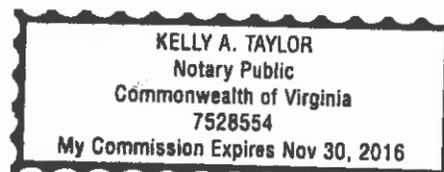
Senior Vice President/CFO of Riverside Middle Peninsula Hospital, Inc., on behalf
of the (Name)
of the corporation.

Kelly A. Taylor
Notary Public

7528554
Registration No.

My commission expires: November 30, 2016

Notary seal:



APPENDIX A

1. **Provide the following within 30 days of issuance of this Order:**

- a. A copy of the contract Riverside entered into with Curtis Bay for hazardous waste disposal.
- b. A copy of the most recent hazardous waste manifest Riverside used to ship the most recent hazardous waste offsite since the DEQ Facility inspection.
- c. A description of all hazardous wastes and universal wastes, including discarded commercial chemical products, generated at the Facility with the accompanying waste codes, as applicable.
- d. An estimate of the amount of each type of hazardous waste being generated by the Facility on a monthly basis.
- e. Photo documentation of all black containers at each location in the Facility being used for hazardous waste accumulation
- f. A detailed description of training received by Facility staff members managing hazardous wastes.
- g. A signed attendance list or an acknowledgement of training by Facility staff members documenting that they have received the hazardous waste training.
- h. A revised hazardous waste notification form 8700-12, if the amounts and waste codes described in response to items c and d above, differ from the generator class designated in the original EPA Notification of Hazardous waste submitted by Riverside in 1991.

2. **Contact**

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

Cynthia Akers
Enforcement
VA DEQ-PRO
4949-A Cox Rd.
Glen Allen, VA 23060
(804) 527-5079 – phone
(804) 527-5106 – fax
Cynthia.Akers@dcq.virginia.gov