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# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*
VALLEY REGIONAL OFFICE
4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

## VIRGINIA WASTE MANAGEMENT BOARD
## ENFORCEMENT ACTION - ORDER BY CONSENT
## ISSUED TO
## WINCHESTER MEDICAL CENTER
## EPA ID No. VAD988190690

### 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 Winchester Medical Center, regarding the Winchester Medical Center facility, 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. "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.

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" or "Site" means the Winchester Medical facility located at 1840 Amherst Street in Winchester, Virginia.

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

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

9. "LQG" means a 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).

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

11. "P-listed wastes" refers to a specific list of discarded commercial chemical products that have been designated as acutely hazardous wastes. The list can be found in the regulations at 40 CFR §261.33.

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

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

14. "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 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.

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

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

18. "VAC" means the Virginia Administrative Code.

19. "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.

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

21. "Winchester Medical" means Winchester Medical Center, a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Winchester is a "person" within the meaning of Va. Code § 10.1-1400.

## SECTION C: Findings of Fact and Conclusions of Law

1. Winchester Medical Center (Winchester Medical) owns and operates the Facility located in Winchester, Virginia. The Facility is a non-profit hospital. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. Winchester Medical submitted a RCRA Subtitle C Site Identification Form, received January 16, 1991, that gave notice of regulated waste activity at the Facility as a CESQG of hazardous waste. Winchester Medical was issued EPA ID No. VAD988190690 for the Facility.

3. At the Facility, Winchester Medical 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. Hazardous wastes, including those listed below, are accumulated in containers at the Facility after generation.

| | | |
|---|---|---|
| D001: Ignitable Waste | P042: Epinephrine | U132: Phenol |
| D002: Corrosive Waste | P043: Diisopropylfluoro phosphate | U150: L-phenylalanine |
| D004: Arsenic | P046: Thiofanox | U151: Mercury |
| D005: Barium | P075: Nicotine | U154: Methanol |
| D006: Cadmium | P081: Nitroglycerine | U157: Methyl chlorocarbonate |
| D007: Chromium | P108: Strychnine | U165: Naphthalene |
| D008: Lead | P188: Methyl carbamate ester | U182: Paraldehyde |
| D009: Mercury | P204: Physostigmine | U188: Phenol |
| D010: Selenium | U002: Acetone | U200: Reserpine |
| D011: Silver | U010: Mitomycin C | U201: Resorcinol |
| D012: Endrin | U014: Benzenamine | U202: Saccharin |
| D013: Lindane | U015: L-Serine | U203: 1,3 Benzodioxole |
| D014: Methoxychlor | U034: Acetaldehyde | U204: Selenium dioxide |
| D018: Benzene | U035: Chlorambucil | U205: Selenium sulfide |
| D022: Chloroform | U044: Chloroform | U206: D-Glucose |
| D023: o-Cresol | U058: Cyclophosphamide | U219: Thiourea |
| D024: m-Cresol | U059: Daunomycin | U226: 1,1,1, trichloroethane |
| D025: p-Cresol | U080: Methylene chloride | U228: Trichloroethylene |
| D026: Cresol | U089: Phenol | U237: Uracil |
| F003: Spent non-halogenated solvents | U093: Benzenamine | U238: Carbamic acid |
| P001: 2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenbutyl)- | U112: Ethyl Acetate | U248: 2H-1-Benzopyrn-2-one, 4-hydroxy-3-(3-oxo-1-phenbutyl)- |
| P012: Arsenic trioxide | U117: Ethyl ether | U404: Triethylamine |
| | U122: Formaldehyde | |
| | U129: Cyclohexane | |

4. On April 8, 2015, 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. Weekly inspections were not being performed in the lab accumulation area.

      40 CFR 265.174 as required by 40 CFR 262.34(d)(2) and as referenced in 9 VAC 20-60-262 and 265 of the VHWMR requires that at least weekly, the owner or operator must inspect areas where containers are stored.

   b. Universal Waste (lamps) located in the supply room were not stored in a closed container.

      40 CFR 273.13(d)(1) as referenced in 9 VAC 20-60-273 of the VHWMR requires that containers and packages that contain Universal Waste lamps must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

   c. Universal Waste lamps were not labeled with the words "Universal Waste".

      40 CFR 273.14(e) as referenced in 9 VAC 20-60-273 of the VHWMR requires that the containers be labeled with the words "Universal Waste Lamps" or "Waste Lamps."

   d. Universal Waste lamps were not marked with the date when they became a waste.

      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 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.

   e. In January 2014, Winchester Medical Center generated 2,215 lbs (1,005 kg) of hazardous waste. Each of the eleven manifests reviewed from August 26, 2013 through March 9, 2015 indicate that P-listed wastes are a portion of the total hazardous wastes manifested. According to EPA's definition of hazardous waste in 40 CFR 261.3, if one mixes a listed hazardous waste with other waste, the total volume of the mixed waste is automatically a listed hazardous waste. The P-listed wastes were not weighed prior to mixing with the total hazardous waste volume. The total acute hazardous waste volume generated was greater than 1 kg a month for the months of August 2013, September 2013, January 2014, February 2014, November 2014, December 2014, January 2015 and March 2015. Winchester Medical has not managed its waste nor operated the Facility in accordance with the requirements of a Large Quantity Generator of hazardous waste.

      40 CFR 261.5(e)(1) as referenced in 9 VAC 20-60-261 of the VHWMR states that

if a generator generates a total of one kilogram of acute hazardous waste in a calendar month all quantities are subject to full regulation.

f. Winchester Medical Center generated LQG amounts of hazardous waste and has not paid an annual fee or notified DEQ.

9 VAC 20-60-1283(E) of the VHWMR requires that each episodic 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.

9 VAC 20-60-315(D) of the VHWMR 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.

5. On May 18, 2015, Winchester Medical provided DEQ with notice it was an LQG of hazardous waste at the Facility.

6. On May 19, 2015, DEQ issued Notice of Violation (NOV) No. 15-05-VRO-002 to Winchester for the violations listed in paragraph 4, above.

7. On June 18, 2015, DEQ staff met with Facility representatives to discuss the NOV. The facility reported that weekly inspections were being performed in the lab accumulation area and that Universal Waste bulbs would all be crushed immediately when transported to the crusher room. The Facility has provided notification as a Large Quantity Generator of HW. They conducted a reeducation program beginning in June 2015 for staff on HW requirements.

8. Based on the results of the April 8, 2015 inspection, the Board concludes that Winchester Medical has violated 40 CFR 265.174, 40 CFR 273.13(d)(1), 40 CFR 273.14(e), 40 CFR 273.15(c), 40 CFR 261.5(e)(1), 9 VAC 20-60-1283(E) and 9 VAC 20-60-315(D) as described in paragraph C(4), above.

9. Winchester Medical submitted documentation on June 18, 2015 that verifies that the violations described in paragraph C(4), above, have been corrected.

10. In Order to complete its return to compliance, DEQ staff and representatives of Winchester Medical 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 Winchester Medical, and Winchester Medical agrees to:

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

2. Pay a civil charge of **$23,125.00** 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

Winchester Medical shall include its Federal Employer Identification Number, 54-0505979, 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, Winchester Medical 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 Winchester Medical for good cause shown by Winchester Medical, 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. 15-05-VRO-002 dated May 19, 2015. 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, Winchester Medical admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Winchester Medical 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. Winchester Medical 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 Winchester Medical 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. Winchester Medical 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. Winchester Medical shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Winchester Medical 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 Winchester Medical. Nevertheless, Winchester Medical 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 Winchester Medical has completed all of the requirements of the Order;

b. Winchester Medical 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 Winchester Medical.

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

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, Winchester Medical voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2015.

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

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Winchester Medical Center voluntarily agrees to the issuance of this Order.

Date: 8/11/2015 By: _____, Senior Vice President and Chief Operating Officer
Grady Philips — Title
Winchester Medical Center

Commonwealth of Virginia
City/County of Frederick

The foregoing document was signed and acknowledged before me this 11th day of August, 2015, by Grady W. "Skip" Philips, III who is Senior Vice President & Chief Operating Officer of Winchester Medical Center, on behalf of the company.

Autumn L Jones
Notary Public

138481
Registration No.

My commission expires: June 30, 2019

Notary seal:

AUTUMN LEIGH JONES
NOTARY PUBLIC
REG. #138481
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES JUNE 30, 2019

# APPENDIX A
# SCHEDULE OF COMPLIANCE

1. **Hazardous Waste Management Plan**

   Within 180 days of the effective date of this Order, Winchester Medical shall submit a draft Hazardous Waste Management Plan to DEQ for review. This Plan shall include identification of key personnel and their responsibilities in the Facility's waste management program, minimization of waste, proper handling and storage of wastes, characterizing new wastes and employee training. Winchester Medical shall submit the final Plan within 30 days of receiving comments from DEQ on the draft Plan.

2. **Training**

   Within 30 days of completion of the final Hazardous Waste Management Plan, Winchester Medical shall provide training to all affected Facility personnel on compliance with the Facility's Plan and the hazardous waste regulations. Within 10 days after the training, Winchester Medical shall certify, in writing, to the Department that the training was provided to Facility personnel.

3. **Contact**

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

   Karen Gail Hensley, P.E.
   Enforcement Team Leader
   VA DEQ –Valley Regional Office
   4411 Early Road
   P.O. Box 3000
   Harrisonburg, VA 22801
   (540) 574-7821 - phone
   (540) 574-7878 - fax
   karen.hensley@deq.virginia.gov