COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO BRISTOL NURSING HOME, INC.

SECTION A: Purpose

This is a Consent Order issued by the Virginia Waste Management Board to Bristol Nursing Home, Inc. This Order is issued pursuant to the authority granted to the Waste Management Board by § 10.1-1455 of the Code of Virginia to resolve certain violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. **"Code" or "Va. Code" means the Code of Virginia (1950), as amended.**

2. **"Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§10.1-1401 and 10.1-1184.**

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

4. **"Director" means the Director of the Department of Environmental Quality.**

5. **"Order" means this document, also known as a consent order.**

6. **"BNH" means Bristol Nursing Home, Inc., a company certified to do business in Virginia and its affiliates, partners, subsidiaries and parents.**

7. **"Facility" means the nursing home facility, owned and operated by Bristol Nursing Home, Inc., and located at 261 North Street, Bristol, Tennessee (one half of the Facility is located on the Virginia side of the state line).**

8. **"RMW" means regulated medical wastes, as that term is defined in 9 VAC 20-120-10, *et seq.***

9. **"SWRO" means the Department's Southwest Regional Office, located in Abingdon, Virginia.**

10. **"Regulations" means Virginia's Regulated Medical Waste Management Regulations, 9 VAC 20-120-10, *et seq.***

SECTION C: Findings of Facts and Conclusions of Law

1. **On May 2, 2007, DEQ staff were notified by City of Bristol, Virginia ("City") Integrated Solid Waste Management Facility personnel that its Baler Transfer Station, Solid Waste Management Facility Permit-By-Rule ("PBR") No. 121, had received RMW that day. The RMW was identified during waste inspections of material received at the City's baler transfer station. Per City personnel, the RMW was received from BNH, and was delivered to the baler transfer station by Waste Management, Inc. Documentation provided to DEQ staff also indicated that the RMW included at least two plastic red sharps containers that split open when dumped onto the baler transfer station floor.**

2. **Per documentation provided by City personnel, a total of 10.41 tons of material (weight of the load containing the sharps containers) was identified as requiring disposal as RMW. The material was loaded into two lined and covered 30-yard containers. The containers were then shipped by Environmental Options on May 3, 2007 to the Sci-Med Waste Systems facility in Roanoke, Virginia for proper treatment/disposal. Total disposal weight of the two containers was 11.06 tons.**

3. **9 VAC 20-120-150 of the Regulations list the following as being subject to the chapter: 2) Human blood and human body fluids; ...4) Sharps. Sharps likely to be contaminated with organisms that are pathogenic to healthy humans, and all needles, syringes with attached needles, suture needles, and scalpels are regulated medical wastes;...7) Any solid waste contaminated by or mixed with regulated medical wastes.**

4. **9 VAC 20-120-650. Disposal of treated wastes states, "C. Regulated medical waste treated in compliance with Part VII, Part VIII or Part IX shall be deemed to be treated in accordance with this chapter. Regulated medical waste not treated in accordance with this chapter shall not be transported, received for transport or disposal, or disposed of in any solid waste management facility."**

5. **DEQ's SWRO issued a Notice of Violation ("NOV") to BNH on May 10, 2007 citing the above listed violations. DEQ staff and BNH officials then met on May 30, 2007 to resolve the apparent violations. At that meeting, BNH officials provided DEQ staff with the disposal manifests and invoice for disposal of the RMW in question.**

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §10.1-1455, the Virginia Waste Management Board orders BNH, and BNH agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders BNH, and BNH voluntarily agrees, to pay a civil charge of $6,300.00. Payment shall be made in three equal, monthly payments of $2,100.00, due within 30, 60 and 90 days, respectively, of the effective date of the Order, in settlement of the violations cited in this Order. Each payment shall be made by check or money order payable to the "Treasurer of Virginia", and delivered to:

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

Either on a transmittal letter or as a notation on each check or money order, BNH shall indicate that each payment is submitted pursuant to this Order, and shall include BNH's Federal Identification Number.

SECTION E: Administrative Provisions

1. **The Board may modify, rewrite, or amend the Order with the consent of BNH, for good cause shown by BNH or on its own motion after notice and opportunity to be heard.**

2. **This Order addresses only those violations specifically identified herein, including those matters addressed in the NOV issued on May 10, 2007. This Order shall not preclude the Board or 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 as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.**

3. **For purposes of this Order and subsequent actions with respect to this Order, BNH admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.**

4. **BNH 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. **BNH declares it has received fair and due process under the Administrative Process Act, Code § 2.2-4000 *et seq.*, 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 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 enforce this Order.**

6. **Failure by BNH 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. **BNH 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 act of God, war, strike, or such other occurrence. BNH must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. BNH shall notify the SWRO Regional Director within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:**

    a. **the reasons for the delay or noncompliance;**
    b. **the projected duration of 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 notify the SWRO Regional Director within 24 hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of 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. **Any plans, reports, schedules or specifications attached hereto or submitted by BNH 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.**

11. **This Order shall become effective upon execution by both the Director or his designee and BNH. Notwithstanding the foregoing, BNH agrees to be bound by any compliance date which precedes the effective date of this Order.**

12. **This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to BNH. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BNH from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.**

13. **The undersigned representative of BNH 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 BNH to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of BNH.**

14. **By its signature below, BNH voluntarily agrees to the issuance of this Order.**

And it is so ORDERED this ____ day of _____, 2007

_____

Michael D. Overstreet, Regional Director
Department of Environmental Quality

Bristol Nursing Home, Inc. voluntarily agrees to the issuance of this Order.

William D. "Don" Moneyhun

William D. ("Don") Moneyhun
President and Administrator
Bristol Nursing Home, Inc.

Date: 7/13/2007

STATE OF TENNESSEE
~~**Commonwealth of Virginia**~~

City/County of SULLIVAN

The foregoing document was signed and acknowledged before me this 13TH **day of** JULY**, 2007 by** WILLIAM D. MONEYHUN**, who is** PRESIDENT AND ADMINISTRATOR**,**
name **title**
on behalf of Bristol Nursing Home, Inc.

Date: 7-13-07

Notary Public

FREDERICK ALLEN SOUDER
NOTARY PUBLIC AT LARGE
SULLIVAN COUNTY, TN

My commission expires: MAY 24, 2008

APPENDIX A

In order to comply with the provisions of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations, Bristol Nursing Home, Inc. agrees to implement the following actions by the dates noted below:

1. **BNH shall provide updated training for all affected personnel on the proper packaging, labeling, identification and disposal of regulated medical wastes. Within 30 days of the effective date of the Order, BNH shall submit a letter to DEQ's SWRO certifying that all affected personnel at BNH have received this updated training.**