



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CHIPPENHAM & JOHNSTON-WILLIS HOSPITALS, INC.
FOR
JOHNSTON-WILLIS HOSPITAL
EPA ID No. VAD066016585**

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 Chippenham & Johnston-Willis Hospitals, Inc., regarding the Johnston-Willis 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. "CJW" means Chippenham & Johnston-Willis Hospitals, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. CJW is a "person" within the meaning of Va. Code § 10.1-1400.
4. "CO" means the Central Office of DEQ, located in Richmond, Virginia.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Facility" means the Johnston-Willis Hospital located at 1401 Johnston Willis Drive in Richmond, Virginia.
8. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
9. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
10. "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).
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
13. "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.
14. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
15. "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 40 CFR § 273: Batteries as described in §273.2; Pesticides as described in §273.3; Mercury-containing equipment as described in §273.4 and Lamps as described in §273.5.
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.

SECTION C: Findings of Fact and Conclusions of Law

1. CJW owns and operates the Facility in Richmond, Virginia. The Facility is a general medical and surgical hospital. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. The Facility submitted a RCRA Subtitle C Site Identification Form (received February 29, 2016) that gave notice of regulated waste activity at the Facility as an LQG of hazardous waste. The Facility was issued EPA ID No. VAD066016585 for the Facility. The Facility is a small quantity handler of universal waste.
3. At the Facility, CJW generates the following hazardous wastes which are also solid wastes. Each waste is listed with associated waste codes as described in 40 CFR § 261.21, 261.24 and 261.31. Hazardous wastes, including those listed below, are accumulated in containers at the Facilities after generation.

Pharmaceutical waste: D001, D007, D009, D010, D011, D013, D022, D024, P001, P075, P188, U010, U035, U058, U059, U129, U188, U200, and U205.

Spent Xylene: D001, F003.

4. On September 8, 2016, 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. The Facility accumulated spent xylene hazardous waste onsite for more than 90-days without a permit. DEQ staff reviewed the Facility's hazardous waste manifests for the past three years. Spent xylene hazardous waste is generated routinely in a facility laboratory. It was noted that the facility last shipped a drum of spent xylene hazardous waste on April 16, 2015. A new drum of spent xylene had been accumulating in the <90 day/central hazardous waste accumulation area since that time.

40 CFR 262.34(b), as referenced by 9 VAC 20-60-262, states: A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and 267 and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 90-day period.

- b. Hazardous waste manifests numbers 001369019PSC dated 9-7-16, 001330259PSC dated 7-14-16, 007154542FLE dated 9-8-15, and 007154527FLE dated 6-16-15 were missing land disposal restriction (LDR) notifications.

40 CFR §268.7(a)(2), as referenced by 9VAC-20-60-268, states: "(a) Requirements for generators:"... "(2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file.

The notice must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in paragraph (a)(4) of this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.") No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file."

- c. The Facility had provided notification as a large quantity generator of hazardous waste in February 2016. However, the Facility did not provide notification of the exact locations of the hazardous waste accumulation areas.

9 VAC 20-60-262(B)(4) states: "In the case of a new generator who creates such accumulation areas after March 1, 1998, 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."

- d. The Facility staff did not inspect hazardous waste containers on a weekly basis for leaks and deterioration in the <90 day/central hazardous waste accumulation area.

40CFR §265.174 states: "At least weekly, the owner or operator must inspect areas where containers are stored ... The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of the inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of observations made, and the date and nature of any repairs or other remedial actions."

- e. A 55-gallon drum of spent xylene hazardous waste at the <90 day hazardous waste accumulation area did not have a legible label with an accumulation start date.

40 CFR § 262.34(a), as referenced by 9 VAC20-60-262, states: "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: (2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;..."

- f. A box of universal waste lamps in the <90 day/central hazardous waste accumulation area was opened and uncontained.

40 CFR §273.139(d) states: "A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: (1) 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."

- g. A box of universal waste lamps in the <90 day/central hazardous waste accumulation area was not labeled with the words "Universal Waste—Lamp(s)" or "Waste Lamp(s)" or "Used Lamp(s)."

40 CFR §273.14 states: "A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below: (e) Each lamp or 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)."

- h. A box of universal waste lamps in the <90 day/central hazardous waste accumulation area did not have an accumulation start date.

40 CFR §273.15(c) states: "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. The handler may make this demonstration by: (1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received; (2) Marking or labeling each individual item of universal waste with the date it became a waste or was received; (3) Maintain an inventory system on-site that identifies the date each universal waste became a waste or was received; (4) Maintaining an inventory system on-site that identifies the earliest date that any

universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received; (5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or (6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.”

5. On September 12, 2016, CJW submitted a response providing the missing LDRs, correcting violation C(4)(b).
6. On September 23, 2016, CJW submitted a response stating that the spent xylene hazardous waste container has been picked up by Environmental Options Inc. for transportation and disposal, correcting violations C(4)(a) and (e).
7. On September 25, 2016, Facility personnel corrected the UW lamp violations, correcting violations C(4)(f)-(i).
8. On January 4, 2017 based on the inspection and follow-up information, the Department issued Notice of Violation No. 2016-12-PRO-602 to the CJW for the violations described in paragraphs C(4)(a)-(h), above.
9. On January 24, 2017 DEQ staff met with representatives of CJW to discuss the NOV. CJW submitted an action plan to DEQ which stated CJW is now conducting weekly inspections of hazardous waste containers in the <90 day accumulation area, correcting violation C(4)(d), above.
10. Based on the results of September 8, 2016 inspection, the Board concludes that CJW has violated 40 CFR 262.34(a), 40 CFR 262.34(b), 40 CFR 265.174, 40 CFR 268.7(a)(2), 40 CFR 273.14, 40 CFR 273.15, 40 CFR 273.139(d), 9 VAC 20-60-262(B)(4) as described in paragraphs C(4)(a) through (h), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders CJW and CJW agrees to pay a civil charge of \$15,663.00 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

CJW 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, CJW 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 CJW for good cause shown by CJW, 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.2016-12-PRO-602 dated January 4, 2017. 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, CJW admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CJW 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. CJW 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 CJW 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. CJW 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. CJW shall demonstrate that such circumstances were

beyond its control and not due to a lack of good faith or diligence on its part. CJW 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 CJW. Nevertheless, CJW 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 CJW has completed all of the requirements of the Order;
 - b. CJW 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 CJW.

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

And it is so ORDERED this 9 day of March, 2018.



Jefferson D. Reynolds, Enforcement Director
Department of Environmental Quality

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Chippenham & Johnston-Willis Hospitals, Inc. voluntarily agrees to the issuance of this Order.

Date: 1-25-18 By: [Signature], CEO
(Person) (Title)
Chippenham & Johnston-Willis Hospitals, Inc.

Commonwealth of Virginia
City/County of hesterfield

The foregoing document was signed and acknowledged before me this 25th day of
January, 2018, by Bonny McDuskey who is
CEO of Chippenham & Johnston-Willis Hospitals, Inc. on behalf
of the corporation.

[Signature]
Notary Public

7247486
Registration No.

My commission expires: 11/30/18

Notary seal:

