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## **COMMONWEALTH of VIRGINIA**

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Secretary of Natural Resources

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David K. Paylor  
Director

Robert J. Weld  
Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
HCA HEALTHCARE, INC.  
FOR THE  
LEWISGALE HOSPITAL ALLEGHANY  
EPA ID No. VAD988215513**

### **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 HCA Healthcare, Inc., regarding LewisGale Hospital Alleghany in Low Moor, Virginia, 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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
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.

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5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" or "Site" means LewisGale Hospital Alleghany located at 1 Arh Lane, Low Moor, Virginia
7. "Generator" means 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. "HCA" means HCA Healthcare, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. HCA is a "person" within the meaning of Va. Code § 10.1-1400.
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 effected 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. "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. HCA owns and operates the Facility in Low Moor, Virginia. The Facility is a hospital that provides medical and surgical services. The Facility has surgical capabilities, in-patient therapy services, and an in-house pharmacy. The hospital has 205 beds. HCA notified as a LQG of hazardous waste in May 2012 and operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. At the Facility, HCA generates hazardous wastes that include waste pharmaceuticals (D001, D009, D010, D011, D022, D024, P001, P075, P188, U058, U132, and U188) and spent aerosol cans & inhalers (D001). Regulated wastes generated at the Facility include medical waste, biohazardous waste and used oil. Universal wastes generated at the Facility include spent fluorescent lamps and spent cadmium and lithium batteries.
3. On March 14, 2018, 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.
4. At the time of the inspection, HCA had not notified the Department of its central accumulation area (<90-day accumulation hazardous waste area) also known as the Annex. 9 VAC 20-60-26 2. B. 4 requires a LQG to notify the department and document in the operating record that it intends to accumulate hazardous waste in accordance with 40 CFR 262.17 prior to or immediately upon the establishment of each 90-day accumulation area. This notification shall specify the exact location of the 90-day accumulation area at the site.
5. At the time of the inspection, HCA had not submitted a biennial report for the hazardous waste generated during the 2017 calendar year; the report was due by March 1, 2018. HCA submitted the 2017 biennial report on March 23, 2018. 9 VAC 20-60-265 requires an owner or operator to prepare and submit a single copy of a biennial report to the Regional Administrator by March 1 of each even numbered year. The biennial report must be submitted on EPA Form 8700-13B and cover facility activities during the previous calendar year.
6. At the time of the inspection, HCA did not have copies of its biennial reports available for review. 9 VAC 20-60-262 requires that a generator must keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.
7. At the time of the inspection, HCA did not have copies of any manifests for its hazardous waste shipments with the exception of two initial manifests signed by the generator and transporter for shipments made on August 15 and November 7, 2017. 9 VAC 20-60-262 requires that a generator must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until it receives a signed copy from the designated facility

which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

8. At the time of the inspection, HCA was not retaining on-site copies of LDR forms. 9 VAC 20-60-262.B.4 requires that generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal.
9. At the time of the inspection, HCA's Hazardous Material Incident Plan, designated as its Contingency Plan and Emergency Procedures, did not describe arrangements with State emergency response teams, contracts, and equipment supplies. 9 VAC 20-60-265 requires that the [contingency] plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to §265.37.
10. At the time of the inspection, HCA uses a color-coded container system for the management of its waste streams. Hazardous wastes are accumulated in black containers located in various satellite accumulation areas throughout the Facility. The black hazardous waste containers in various satellite accumulation areas were not kept closed. 9 VAC 20-60-265 requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
11. At the time of the inspection, spent fluorescent lamps and spent NiCad and lithium batteries are collected, accumulated, and managed by HCA as universal waste. The containers accumulating the spent lamps were not closed. 9 VAC 20-60-273 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. At the time of the inspection, the container accumulating spent NiCad and lithium batteries was not labeled with the words "Universal Waste Batteries" or "Waste Batteries", or "Used Batteries". 9 VAC 20-60-273 requires that universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."
13. At the time of the inspection, HCA could not provide documentation as to the length of time that the universal waste lamps and universal waste batteries had been accumulated on-site. The boxes containing universal waste lamps and universal waste batteries were not dated with the start accumulation dates. 9 VAC 20-60-273 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 May 7, 2018, based on the inspection and follow-up information, the Department issued NOV No. NOV-18-05-BRRO-001 to HCA for the violations described in paragraphs C(4) through C(13), above.
15. Based on the results of the March 14, 2018 inspection and follow-up information, the Board concludes that HCA has violated 9 VAC 20-60-26 2.B.4, 40 CFR 265.75, 40 CFR 262.40(a) & (b), 40 CFR 268.7(a)(8), 40 CFR 265.52(c), 40 CFR 265.173(a), 40 CFR 273.13(d)(1), 40 CFR 273.14(a), and 40 CFR 273.15(c), as described in paragraphs C(4) through C(13), above.
16. HCA has submitted documentation that verifies that the violations described in paragraphs C(4) through C(13), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders HCA, and HCA agrees to pay a civil charge of **\$13,050** 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

HCA shall include its Federal Employer Identification Number (FEIN) 54-1761046 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).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of HCA for good cause shown by HCA, 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. 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, HCA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. HCA 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. HCA 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 HCA 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. HCA 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. HCA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. HCA 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 HCA. Nevertheless, HCA 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 HCA has completed all of the requirements of the Order;
  - b. HCA 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 HCA.

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

And it is so ORDERED this 26<sup>th</sup> day of April, 2019.



Robert J. Weld, Regional Director  
Department of Environmental Quality

HCA voluntarily agrees to the issuance of this Order.

Date: 3/19/19 By: [Signature], CEO  
William Windham  
LewisGale Hospital Alleghany  
HCA Healthcare, Inc.

Commonwealth of Virginia  
City/County of Alleghany

The foregoing document was signed and acknowledged before me this 19<sup>th</sup> day of March, 2019, by William Windham, who is the CEO of LewisGale Hospital Alleghany, on behalf of the corporation.

[Signature: Brent A. Woodie]  
Notary Public

198531  
Registration No.

My commission expires: May 31, 2020

Notary seal: