

**STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION**

Agency of Natural Resources,
Petitioner,

v.

Central Vermont Medical Center, INC.,
Respondent.

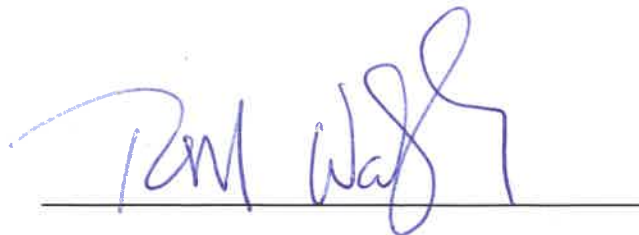
)
)
)
)
)
)
)

Docket # 18-2-19 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on December 27th, 2018, and filed with the Superior Court, Environmental Division, on February 1st, 2018, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 4th day of February 2018.



Thomas G. Walsh, Judge
Vermont Superior Court
Environmental Division

STATE OF VERMONT

SUPERIOR COURT

**ENVIRONMENTAL DIVISION
Docket No.**

**SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff**

v.

**CENTRAL VERMONT MEDICAL CENTER, INC.,
Respondent**

VIOLATIONS

1. Vermont Hazardous Waste Management Regulation (VHWMR) §7-303: Failure to make hazardous waste determinations
2. VHWMR §7-309(a)(4)(A) and (a)(4)(C): Failure to establish arrangements with emergency response organizations
3. VHWMR §7-307(c)(14)(B)(i)-(iii): Failure to post emergency preparedness information in short term storage area
4. VHWMR §7-310(a): Failure to maintain satellite accumulation container at or near the point of waste generation
5. VHWMR §7-310(a)(4), (5), and (8): Failure to close, label, date and move to short-term storage
6. VHWMR §7-310(c): Failure to use only one satellite accumulation container per waste stream
7. VHWMR §7-311(f)(1)(A)-(D): Failure to label short-term storage area hazardous waste containers
8. VHWMR §7-311(d)(1) and (2): Failure to maintain hazardous waste inventory and daily inspection records
9. VHWMR §7-806(b)(1) and (5): Failure to close and label used oil containers
10. VHWMR §7-912(d)(5)(A)(i) and (f)(3): Failure to close and label universal waste containers

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Secretary (Secretary) of the Agency of Natural Resources (Agency) and Central Vermont Medical Center, Inc., Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondent is a Vermont-registered corporation which owns and operates the Central Vermont Medical Center facility located at 130 Fisher Road, Berlin, VT (the Facility).

2. Respondent is a Small Quantity Generator pursuant to the VHWMR, generating between 220-2200 pounds of hazardous wastes per month.
3. On July 17, 2018, the Agency conducted a routine inspection of the Facility. During the site visit Agency personnel observed the following:
 - a. Arrangements with local fire department, police, and emergency response organizations to familiarize the parties with the layout of the facility, properties of hazardous wastes handled on-site and the associated hazards had not been established in violation of VHWMR §7-309(a)(4)(A) and (a)(4)(C).
 - b. Emergency information including the name and telephone numbers of emergency coordinators; location of fire extinguishers and spill control material, and, if present, fire alarm; and the telephone number of the fire department, unless the facility has a direct alarm; had not been posted in the short term storage area in violation of VHWMR §7-307(c)(14)(B)(i)–(iii).
 - c. A partially full satellite accumulation container of pharmaceutical wastes (from endoscopy nursing station) was observed in the soiled utility closet near the endoscopy unit. This area was not at or near the point of waste generation and not under the control of the operator generating the waste stream in violation of VHWMR §7-310(a).
 - d. Multiple satellite accumulation containers that were not marked as “Hazardous Waste” or to identify the contents were observed throughout the facility at multiple nursing stations, both pharmacies, the maintenance shop, x-ray unit storage closet, and lab. In addition multiple satellite accumulation containers were also observed open. A full satellite accumulation container of waste xylene, located under fume hood at the lab, was not dated to indicate when the container became full in violation of VHWMR §7-3010(a)(4), (5), and (8).
 - e. Two satellite accumulation containers for a xylene waste stream (observed in the same location in lab), and multiple satellite containers used for the same pharmaceutical waste stream (observed at both pharmacies) were observed in active use in violation of VHWMR §7-310(c).
 - f. Five containers of waste xylene, each one containing less than 3 gallons, were observed in the short-term storage area that were not marked or labeled as “Hazardous Waste.” In addition none of these containers were marked with a date indicating when they were first

used to store hazardous waste in violation of VHWMR §7-311(f)(1)(A)-(D).

- g. An inventory of hazardous wastes in storage and daily inspection records were not provided in violation VHWMR §7-311(d)(1) and (2).
 - h. One unlabeled 55-gallon drum of used oil was observed in the maintenance shop; the drum was outfitted with an open funnel in violation of VHWMR §7-806(b)(1) and (5).
 - i. On the day of the inspection, two open boxes containing universal waste lamps were observed, with at least three lamps not entirely contained within the boxes. In addition the length of time that the universal waste bulbs have been accumulating could not be demonstrated in violation of VHWMR §7-912(d)(5)(A)(i) and (f)(3).
4. On August 13, 2018, the Agency sent Respondent a Notice of Alleged Violation (NOAV). The NOAV required that various corrective actions be undertaken to come in to compliance with the violations cited in paragraph 3 above.
5. On September 28, 2018, the Agency conducted a follow up inspection site visit of the Facility. During the site visit Agency personnel observed the following:
- a. An open container of barium waste was observed in the imaging department and open containers of pharmaceutical waste were observed in the pharmacy in violation of §7-3010(a)(4).
 - b. Four satellite accumulation containers for pharmaceutical waste were observed in the pharmacy; two of these containers were in active use and contained waste pharmaceuticals, and two were empty but labeled in violation of VHWMR §7-310(c).
 - c. At the time of the follow-up inspection, Agency personnel determined that prior to June 2018, liquid barium waste from the imaging lab was not managed as hazardous waste. A review of Respondent's manifest records over the past five years confirmed that prior to June 29, 2018, liquid barium waste had not been shipped from the facility on a hazardous waste manifest. The Agency later determined that prior to 2014, Respondent flushed barium waste into the municipal sewer system, and that between 2014 and of June 2018, barium waste was mixed with Isolyser 1500 hardener and disposed as solid waste in violation of VHWMR §7-303. Respondent discontinued this practice as of June 2018 and barium-containing waste is currently being managed as hazardous waste under the D005 hazardous waste code.
6. On October 10, 2018, the Agency sent Respondent a second NOAV. The NOAV required that

various corrective actions be undertaken to come in to compliance with the violations cited in paragraph 5 above.

7. On September 13, 2018, Respondent submitted a written request to the Agency's first NOAV, outlining a plan to correct the deficiencies that were identified in the NOAV. On October 16, 2018, Respondent submitted a written response to the Agency's second NOAV, outlining a plan to correct the deficiencies that were identified during the follow-up inspection. The Agency has reviewed the responses submitted by Respondent and has accepted the measures described therein as remedying the violations.
8. Respondent admits the factual findings described above, solely for purposes of resolving this case.
9. The Agency alleges that the above conduct constitutes a violation of VHWMR §§7-303, §7-309(a)(4)(A) and (a)(4)(C), §7-307(c)(14)(B)(i)–(iii), §7-310(a), §7-3010(a)(4), (5), and (8), §7-310(c), §7-311(f)(1)(A)–(D), §7-311(d)(1) and (2), §7-806(b)(1) and (5), and §7-912(d)(5)(A)(i) and (f)(3).

AGREEMENT

Based on the foregoing Statement of Facts and Description of Violations, the parties agree as follows:

- A. For the violations described above, Respondent shall pay a total penalty of \$20,250.00.

Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Administrative Assistant
Environmental Compliance Division
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803

Payment shall be received no later than thirty (30) consecutive calendar days following the date this Assurance is entered as an Order by signature of the Superior Court, Environmental Division (effective date).

- B. Respondent shall comply with the VHWMR in the operation of its business.

- C. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violations alleged above in order to resolve all outstanding disputes.
- D. Respondent agrees that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondent's past record of compliance, such as permit review proceedings and calculating civil penalties under 10 V.S.A. §8010.
- E. The State of Vermont and the Agency reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth hereinabove.
- F. Nothing in this Assurance shall be construed as having relieved, modified, or in any manner affected the Respondent's on-going obligation to comply with all other federal, state or local statutes, regulations or directives applicable to the Respondent in the operation of their business.
- G. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, this Assurance shall become a judicial order. In the event that such order is vacated, the Assurance shall be null and void.
- H. Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein occurring before the effective date of the Assurance, provided that Respondent fully complies with the agreements set forth above.
- I. This Assurance sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Environmental Court. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

J. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. Chapters 201 and/or 211.

K. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Anna T. Noonan, the undersigned, hereby state under oath that I am the President of Central Vermont Medical Center, Inc., and an authorized representative of Central Vermont Medical Center, Inc., and that I have the power to contract on behalf of that entity, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Berlin, Vermont, this 27th day of December 2018.

By: 


Anna T. Noonan, President
Central Vermont Medical Center, Inc.

STATE OF VERMONT

COUNTY OF Washington, ss.

At Berlin, Vermont, this 27 day of December 2018, the above-signatory personally appeared and acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.

Before me,



Notary Public

Term expires: 2-10-2019

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at Montpelier, Vermont, this 31 day of December, 2018.

SECRETARY, AGENCY OF NATURAL RESOURCES

By: 

Emily Boedecker, Commissioner
Department of Environmental Conservation