

**THE STATE OF MARYLAND
DEPARTMENT OF THE
ENVIRONMENT**

v.

**UNIVERSITY OF MARYLAND
SHORE REGIONAL HEALTH
100 Brown Street
Chestertown, MD**

**: LAND MANAGEMENT
: ADMINISTRATION
: 1800 Washington Blvd
: Baltimore, Maryland 21230**

**:
:
: MDE CASE NO: 1987-2534-KE
: FACILITY ID NO: 3168
:
:
:**

SETTLEMENT AGREEMENT AND CONSENT ORDER

This Settlement Agreement and Consent Order (“Consent Order”) is entered into by and between the State of Maryland, Department of the Environment (the “Department”) and the University of Maryland Shore Regional Health (“the Hospital”) (together, the “Parties”).

WHEREAS, pursuant to its powers, duties, and responsibilities vested in the Secretary of the Environment by § 1-301, § 1-404, §§ 4-401 through 4-708 of the Environment Article of the Annotated Code of Maryland and in the Code of Maryland Regulations 26.10.01 through 26.10.15, and delegated to the Director of the Land Management Administration, the Department has conducted and continues to conduct a thorough review of the remediation of a discharge of oil at the Hospital facility located at 100 Brown Street, Chestertown, in Kent County, Maryland and detected in approximately 1989.

WHEREAS, the Hospital is an acute care community hospital within the University of Maryland Medical System.

WHEREAS, Kenneth D. Kozel is the President and Chief Executive Officer of the University of Maryland Shore Regional Health, and he has the authority to bind the Hospital.

WHEREAS, the Hospital is the owner and operator of a 10,000 gallon underground storage tank (“UST”) that is used to store fuel oil for the Hospital facility.

WHEREAS, the Department and the Hospital agree that settlement of this matter is in the public interest, and that entry of this Consent Order without further litigation is the most appropriate means of resolving this matter.

LEGAL AUTHORITIES

WHEREAS, as the owner and operator of USTs in the State of Maryland, the Hospital is subject to federal and State laws and regulations governing oil-related facilities, activities, and pollution, that include, but are not limited to, the following:

A. The Department's Authority

1. The State of Maryland, Department of the Environment is responsible for administering and enforcing State laws regarding USTs, oil-related facilities, and oil-related activities, and oil pollution in and on the land and waters of the State. The Department's statutory authority is set forth in § 1-301, § 1-404, §§ 4-401 through 4-708 of the Environment Article of the Annotated Code of Maryland ("Environment Article"). Pursuant to its statutory powers, duties, and responsibilities, the Department adopts regulations addressing the methods, standards and devices for storage of oil to prevent pollution of the waters of the State. Section 4-405 of the Environment Article. The Department's implementing regulations, including those for oil pollution and UST management, are codified in the Code of Maryland Regulations ("COMAR") 26.10.01 through 26.10.15.

2. The Department investigates releases of oil to determine the nature and extent of the environmental damage, determines the cause and source of the release, and requires repair of damage and restoration of water resources to a degree necessary to protect the best interest of the public. Section 4-405 of the Environment Article.

3. The Department is empowered to issue orders to persons responsible for discharging oil to take corrective action to mitigate the effects of the pollution and restore the natural resources. Sections 4-

412(a)(i), 4-415 of the Environment Article.

4. Where there has been a release of oil that may impact groundwater resources, in executing its mandated responsibilities, the Department may order or take any actions authorized by §§ 4-401 through 4-708 of the Environment Article and COMAR 26.10.01 through 26.10.15 that include, but are not limited to, investigation of the source, nature, and extent of the release; source repair or removal; and soil and/or water removal, remediation, sampling, and evaluation.

5. The Department enforces violations of Title 4, Subtitle 4, violations of rules and regulations adopted under Title 4, Subtitle 4, and violations of orders and permits issued under Title 4, Subtitle 4 by application of the various provisions concerning civil, administrative, and criminal enforcement actions, corrective orders and injunctive relief, and damages, fees, fines, and penalties located throughout Title 4, Subtitles 4 through 7 of the Environment Article and COMAR 26.10.01 through 26.10.15.

6. The Department may obtain monetary and criminal penalties from persons responsible for the discharge of petroleum products. Sections 4-417, 4-418, 4-501 of the Environment Article.

7. After considering certain statutorily-enumerated factors, the Secretary of the Department, may impose an administrative civil penalty of up to \$10,000 for each day a person violates any provision of Title 4, Subtitle 4, or any rule, regulation, order or permit adopted or issued under Subtitle 4, not to exceed a total maximum penalty of \$100,000. Section 4-417(d) of the Environment Article. The Department also may file civil actions for the same types of violations and can seek penalties up to \$25,000 per violation, without limitation, with each day upon which a violation occurs constituting a separate offense. Section 4-417(a) of the Environment Article.

MAY 13 2016

B. Definitions

8. “‘Oil, petroleum products, and their by-products’ means oil of any kind and in liquid form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other waste, crude oils, and every other nonedible liquid hydrocarbon regardless of specific gravity. Oil includes aviation fuel, gasoline, kerosene, light and heavy fuel oils, diesel motor fuels, asphalt, and crude oils, but does not include liquefied petroleum gases, such as liquefied propane, or any edible oils.” COMAR 26.10.01.01B(14); § 4-401(h) of the Environment Article. “Oil” also includes oil mixed with or added to or otherwise contaminating soil, waste, or any other liquid or solid media. Section 4-401(h) of the Environment Article. Oil is a “regulated substance”. COMAR 26.10.02.04B(50)(b).

9. “‘Waters of the State’ includes both surface and underground waters within the boundaries of the State subject to its jurisdiction, including that portion of the Atlantic Ocean within the boundaries of the State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage. The flood plain of free-flowing waters determined by the Department on the basis of the 100-year flood frequency is included as waters of the State.” COMAR 26.10.01.01B(4); § 4-101.1(d) of the Environment Article.

10. “Discharge” means “the addition, introduction, leaking, spilling, or emitting any oil to State waters or the placing of any oil in a location where it is likely to reach State waters.” Section 4-401(d) of the Environment Article; COMAR 26.10.01.01B(7).

11. “‘Underground storage tank (UST)’ means any one or combination of tanks, including underground pipes connected to the tank, and the volume of which, including the volume of underground pipes connected to it, is 10 percent or more beneath the surface of the ground.” COMAR 26.10.02.04B(64).

12. “‘UST system’ or ‘tank system’ means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.” COMAR 26.10.02.04B(66).

13. “Petroleum UST system” means an UST system that contains petroleum, motor fuels, jet fuels, distillate fuel oils, residual fuel oils, heating oils, lubricants, petroleum solvents, and used oils. COMAR 26.10.02.04B(46).

14. “Owner” includes a person either who owns an oil storage facility or UST system, or both, used for storage, use, or dispensing of regulated substances, or who owned the UST system immediately before the discontinuation of its use. COMAR 26.10.02.04B(42).

15. “Operator” means “a person in control of, or having responsibility for, the daily and periodic operation, or the repair, maintenance, closure, testing, or installation, of the UST system.” COMAR 26.10.02.04B(40).

C. It is Unlawful to Discharge Oil Into Waters of the State.

16. It is unlawful for any person to discharge or allow the discharge of oil into or on any waters of the State of Maryland, except in the case of an emergency imperiling life or property, unavoidable accident, collision, or stranding, or pursuant to a permit. Section 4-410(a) of the Environment Article. A person “may not pump, discharge, spill, throw, drain, deposit, or cause to be deposited, oil or other matter containing oil, into, near, or in an area likely to pollute waters of the State.” COMAR 26.10.01.02A, 26.10.02.01A.

17. Persons responsible for the discharge of oil (“Responsible Party or Responsible Parties”) include (1) the owner of the discharged oil; (2) the owner, operator or person-in-charge of the oil storage facility, vessel, barge or vehicle involved in the discharge at the time of or immediately before the discharge; and (3) any other person who caused the discharge. Section 4-401(j)(1) of the

Environment Article; COMAR 26.10.02.01C, 26.10.02.04B(45).

D. Duties of a Responsible Party

18. Report the Discharge: Any person involved in the discharge or spillage of oil shall report the incident to the Department within two hours. Section 4-410 of the Environment Article; COMAR 26.10.01.03; 26.10.08.04

19. Site Remediation: A responsible party must “immediately clean up and abate the effects of the spillage and restore the natural resources of the State.” Section 4-405(c) of the Environment Article. “Responsibility for the prompt control, containment and removal of any released regulated substance shall be with the person responsible for the discharge, the owner of the property, the owner of the regulated substance, the owner and operator of the storage system, and the person-in-charge of the facility, vessel, or vehicle involved in the release.” COMAR 26.10.02.01C; 26.10.08.04.

20. Investigation: “In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater, owners, operators, and other responsible parties shall conduct investigations of the release, the release site, and the surrounding area potentially affected by the release if any of the following conditions exist: (1) there is evidence that groundwater wells have been affected by the release; (2) free product is present; (3) there is evidence that contaminated soils may contaminate groundwater; and (4) the Department requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.” COMAR 26.10.09.06A.

21. “Owners, operators, and other responsible parties shall submit information collected under [COMAR 26.10.09.06A] as soon as practicable but not later than 60 days after confirmation of the discharge or in accordance with a schedule established by the Department.” COMAR 26.10.09.06B.

22. Response Plans for Release Sites: “The Department may require owners, operators, and

other responsible parties to submit additional information or to develop and submit a corrective action plan for responding to contaminated soil and groundwater. If a plan is required owners, operators and other responsible parties shall submit the plan according to a schedule and format established by the Department. Additionally, owners, operators, and other responsible parties may, after fulfilling the requirements of [COMAR 26.10.09.02 – .04] be required to submit a corrective action plan (“CAP”) for responding to contaminated soil and groundwater. In either case, owners, operators, and other responsible parties are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the Department, and shall modify [the] plan as necessary to meet this standard.” COMAR 26.10.09.07.

23. “Remediation activities shall continue until removal of the released regulated substance has been accomplished to the satisfaction of the Department.” COMAR 26.10.09.07E.

24. Additional definitions and provisions pertinent to oil control statutes and/or regulations can be found throughout §§ 4-401 through 4-708 of the Environment Article and COMAR 26.10, and they are incorporated by reference herein to the extent they relate to the subject matter of this Consent Order.

STATEMENT OF FACTS

WHEREAS, the Department has investigated the Hospital facility at 100 Brown Street, Chestertown, Maryland (“the Site”) and has made findings that include, but are not limited to, the following:

25. On or about June 1987, the Department was notified of tank test failures for a 1,000-gallon #2 heating oil UST and a 10,000-gallon #2 heating oil UST servicing the Hospital. In 1989, monitoring wells were installed, and testing of those wells revealed that oil had impacted groundwater on-Site.

26. The Department determined that the Hospital was a responsible party for the discharge of

oil at the Site, and the Hospital has not disputed this determination. The Department case file number for this discharge of oil at the Site is: 1987-2534-KE.

27. Since discovery of the release, the Hospital has cooperated with the Department in the remediation of the Site. In May of 1991, the Hospital installed a groundwater remediation system to recover liquid phase heating oil from the subsurface and contain the dissolved product plume on the Site.

28. By July 1999, a total of 66,287 gallons of oil had been recovered. Also in 1999, three groundwater recovery wells were replaced (RW-1, RW-2, and RW-3). In 2001 and 2002, the groundwater treatment system was upgraded to address a significant decrease in product recovery per month. The upgrades included additional recovery and monitoring wells and new product recovery pumps. By March 2012, approximately 83,428 gallons of liquid heating oil had been recovered.

29. In July 2012, the Hospital was given approval for a trial pump and treat system shutdown to assess whether constituents of concern (e.g. liquid phase hydrocarbons (“LPH”) and total petroleum hydrocarbons and diesel range organics (“TPH-DRO”)) were remediated sufficiently to be protective of public health and the environment in the absence of the groundwater recovery. During this time, regular monitoring of site wells continued on a monthly schedule.

30. In June 2013, the routine monitoring detected an increase in contamination levels and the Hospital notified the Department that it was restarting the pump and treat system.

31. With Department approval, in 2014, the Hospital implemented a pilot study to demonstrate the viability of a soil cleansing product known as Ivey-Sol[®] (“surfactant”) to safely liberate sorbed residual hydrocarbons from soils in the subsurface to prevent further contamination. The pilot study demonstrated that the surfactant process could be done safely and could be effective in liberating and removing sorbed residual hydrocarbons.

32. In January 2015, the Hospital submitted a Groundwater Remediation Pilot Test Evaluation Report and Proposed 2015 Action Plan. By letter from the Department to the Hospital dated July 22, 2015, the Department approved the 2015 Action Plan, as modified by letter from H&B Solutions, LLC to the Department dated April 24, 2015 (collectively, the “Approved CAP”).

33. Under the Approved CAP, the Hospital began the surfactant injection and extraction events in August 2015. The surfactant injection and extraction events were concluded in March 2016.

34. The Hospital continues to operate the pump and treat system while it collects groundwater samples and conducts routine monitoring of site conditions to confirm the effectiveness of the site remediation efforts.

WHEREAS, as of the effective date of the execution of this Consent Order, the data collected from the Hospital’s work performed at the Site demonstrates a decreasing trend in the concentrations of dissolved phase petroleum constituents within the majority of the monitoring well network and has continued to demonstrate no detections of dissolved phase petroleum constituents in the wells down gradient from the original release and at the Hospital’s property line.

WHEREAS, the Hospital and the Department wish to address the investigation and remediation of oil contamination at and from the Site, on the terms set forth herein.

WHEREAS, the mutual objectives of the Hospital and the Department in entering into this Consent Order are to provide for and achieve compliance at the Site with Title 4, Subtitles 4 through 7 of the Environment Article and the implementing COMAR regulations and to achieve restoration of the natural resources in a manner and degree that protects public health and the environment.

WHEREAS, the Hospital and the Department are entering into this Consent Order to address the investigation and remediation of oil contamination at and from the Site without the expense and inconvenience of litigation and without the admission, imposition, or adjudication of liability or guilt.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements set forth herein, the following provisions are hereby **AGREED** and **CONSENTED** to by and between the Hospital and the Department:

WORK TO BE PERFORMED

35. The Hospital shall implement the Approved CAP in accordance with its terms, including any amendments thereto.

36. Any subsequent amendments to the Approved CAP must be in writing and executed by both parties.

37. Parties may choose to address Minor Technical Modifications to the Approved CAP in accordance with the “Minor Technical Modifications” provisions of this Consent Order.

38. Once the Approved CAP has been completed, the Hospital shall continue monthly and quarterly sample collection of the Department designated monitoring wells including laboratory testing of appropriate constituents as previously directed by the Department including using EPA Method 8260 for volatile organic compounds, fuel oxygenates, and naphthalene and using EPA Method 8015 for TPH-DRO. The Hospital shall also begin monitoring groundwater quarterly for surfactants using EPA Method 5540D until surfactants are no longer detected in any of the site wells. The Hospital shall submit quarterly reports of the sampling and analysis pursuant to the Department’s schedule.

39. Monthly and quarterly sampling shall continue pursuant to ongoing Department monitoring requirements until project closure or upon written determination by the Department that the existing quarterly and monthly monitoring is to be replaced with a revised/updated monitoring plan.

40. The Department and the Hospital have discussed the need to install several soil borings on the site for the collective purposes of logging soil types with depth, collecting soil samples with depth, collecting groundwater samples, and determining the presence of LPH with depth. The Department will

send a request for a work plan to the Hospital for this purpose. The Hospital will submit a work plan for the Department's approval. The Department will review the work plan and approve it, or approve it with modifications. The Hospital will complete the approved work plan within the time frames specified by the Department. The Hospital will compile all data collected from this soil boring investigation into a comprehensive report to be submitted to the Department at the time to be specified in the work plan approval.

41. Once surfactants are no longer detected by laboratory analysis and TPH-DRO concentrations are at or less than 1 part per million (ppm), the Hospital may submit to the Department a request to turn off the pump and treat system and begin post-remedial monitoring.

42. Post-remedial monitoring will consist of continued monthly and quarterly sample collection of the Department designated monitoring wells including laboratory testing of appropriate constituents as previously directed by the Department. The post-remedial monitoring will continue for a period of at least two years (i.e. 24 monthly monitoring events and 8 quarterly monitoring events).

43. During the post-remedial monitoring time period, the pump and treat system must be maintained intact at the site. If during the post-remedial monitoring period, the Department instructs the Hospital to restart the pump and treat system, the Hospital will do so within 10 days. If the pump and treat system is required to be restarted, the Hospital will follow the same procedures to request permission to turn off the pump and treat system and will enter into a new post-remedial monitoring period, as described in paragraphs 41 and 42.

44. At the conclusion of the post-remedial monitoring period, the Hospital may request final case closure using the seven risk factors as described in the Department's *Maryland Environmental Assessment Technology (MEAT) for Leaking Underground Storage Tanks* guidance document. In addition to the seven risk factor analysis and consistent with the MEAT guidance document, the

Hospital must demonstrate that an asymptotic trend in dissolved-phase contamination has been established. The Hospital will demonstrate this by using, at a minimum, a statistical trend analysis, such as the Mann-Kendall test, to determine whether the contaminant plume is statistically stable or statistically decreasing.

45. The Department will review the case closure request and other supporting documentation to make a final determination on closure of the case. After receiving the Department's approval for the final case closure process, the Hospital will meet with the Town of Chestertown's Mayor, Town Manager, and Utilities Manager ("Town officials") to communicate final steps in closing the remediation project.

46. Upon receiving the Department's written approval that the case closure process can be initiated, the Hospital may begin decommissioning the pump and treat system and properly abandoning wells. If approved by the Department, the Hospital may retain wells for purposes of monitoring groundwater conditions after the Department's case has been closed. The Hospital will submit all documentation demonstrating that wells have been abandoned per State regulations and the pump and treat system has been decommissioned.

47. The Department shall determine when remediation is completed to an extent that is protective of public health and the environment. The Department, in its sole discretion, will issue a "Final Closure Letter" pursuant to COMAR 26.10.01.05E pertaining to the Site.

GENERAL TERMS OF IMPLEMENTATION

A. Scope of "the Site"

48. For purposes of the work and activities to be performed by the Hospital under this Consent Order, references in this Consent Order to "the Site" refer to the location of the subject the Hospital facility and to properties affected by the release as determined by the Department. References in this

Consent Order to “the Site” do not limit the authority of the Department to require the Hospital to perform work at properties the Department determines have been affected by the release. References to “on-Site” or “off-Site” work in this Consent Order or in any document or communication pertaining to the subject matter of this Consent Order do not affect the scope or meaning of “the Site” as it is used throughout this Consent Order.

B. Field Activities

49. The Hospital shall notify the Department’s Case Manager for the Site at least five (5) business days before engaging in any field activities related to sampling at the Site, such as well drilling, installation of equipment, or sampling, unless an emergency makes advance notice impracticable.

50. At the request of the Department, the Hospital shall provide or allow the Department or its authorized representatives to take split or duplicate samples of any samples collected by the Parties. Similarly, at the request of the Hospital, the Department shall allow the Hospital to take split or duplicate samples of any samples collected by the Department. The Department shall notify the Hospital at least five (5) business days before conducting any sampling, unless an emergency makes advance notice impracticable.

51. The Hospital shall submit to the Department the results of all sampling, monitoring, and/or tests or other data generated by or on behalf of the Parties pursuant to work performed at the Site. The Department may limit the timing and scope of submission of data.

52. Nothing herein shall be interpreted as limiting the sampling authority of the Department under any federal or State law.

C. Minor Technical Modifications

53. “Minor Technical Modifications” are modifications in the studies, techniques, procedures or designs utilized in carrying out the work in the Approved CAP or other work at the Site

which do not alter or affect in any way the substance of the work approved by the Department and which are consistent with the objectives of the Consent Order and necessary to the completion of the approved work.

54. Minor Technical Modifications may be made by mutual agreement of the Department's Case Manager and the Hospital's Case Manager, shall be memorialized by written (including electronic) correspondence between these Case Managers, and shall have as an effective and enforceable date the date that the Parties designate in their correspondence. Any Minor Technical Modifications approved by the Department shall be deemed incorporated into and part of the Approved CAP or any amendments thereto.

55. The Case Managers shall send copies of their correspondence (including electronic) memorializing such Minor Technical Modifications to the Principal Points of Contact for both Parties.

D. Site Deadlines

56. "Deadlines" as referenced herein shall include all dates established for deadlines, due dates, endpoints, completion dates, submission dates, schedules, and/or periodic scheduling of any action or submission required pertinent to the Site.

57. Revisions to Deadlines. Based on good cause shown, the Department shall approve revised Deadlines for investigative, remedial, monitoring, sampling, or reporting requirements. "Good cause" shall include, but not be limited to, additional data or engineering analysis developed during characterization, development or implementation of the Approved CAP, Revised CAP, amendments thereto, or other governing remedial plan that demonstrates that the work cannot be completed according to the approved Deadline.

58. If the work is delayed by direction of the Department, the schedule for completion of the work shall be extended by the time period of the delay, provided, however, if the Department suspends

the work and the reasons are due to the negligent or willful acts or omissions of the Hospital, or its contractor(s), then any extension of the schedule of completion shall be at the discretion of the Department.

59. When Deadlines are changed, the revisions shall be effective, implemented, and enforceable, upon the dates directed or agreed to by the Department.

60. Provisions In The Event of Delay or Anticipated Delay and Force Majeure. The Hospital shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is delayed by events or circumstances arising from causes beyond the reasonable control of the Hospital or unforeseeable events, which cannot be avoided or overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Order.

61. Circumstances beyond the reasonable control of the Hospital include, without limitation, earthquake, flood, hurricane, severe weather or other act of God; war; riot; terrorism; injunction; fire; labor stoppage; freight embargo; material shortages; appropriation of funding by the Maryland General Assembly, and compliance with any law, rule, or Order of any governmental body, either existing now or hereafter created, that conflicts with the requirements or obligations of this Consent Order. Circumstances beyond the reasonable control of the Hospital also may include failure by the Hospital to secure access to third-party properties, provided that the Hospital made timely and good-faith efforts to obtain access to the properties at issue.

62. If any event occurs which causes or may cause delays in the completion of a deadline as required under this Consent Order, the Hospital shall notify the Department in writing not more than twenty (20) days after the delay or when the Hospital knew or should have known of the anticipated delay, whichever is earlier. The notice shall be directed to the Department's Principal Point of Contact.

63. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Hospital to minimize the delay, and the timetable by which those measures shall be implemented. The Hospital shall adopt all reasonable measures to avoid or minimize any such delay.

64. Failure by the Hospital to comply with the notice requirements of this Section shall render this Section void and no effect as to the particular incident involved and constitute a waiver of the Hospital's right to seek an extension of the time for performance of its obligations under this Consent Order.

65. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Hospital which could not be overcome by due diligence shall rest with the Hospital. Such circumstances do not include, changed economic circumstances, routine inclement weather, or failure to obtain federal, State, or local permits, unless the Hospital has made timely and reasonable application for such permits. Increased costs or expenses associated with the implementation of actions called for by this Consent Order shall not, in any event, be a basis for changes in this Consent Order or extensions of time under this Consent Order. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

66. If the Parties agree that the delay or anticipated delay in compliance with this Consent Order has been or will be caused by circumstances entirely beyond the control of the Hospital which could not be overcome by due diligence, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate to such extension of time.

67. If the Department determines that the event or anticipated event which has caused or will cause the delay constitutes an unforeseeable event or circumstance beyond the control of the

Hospital, the time for performance hereunder shall be extended for an appropriate period of time as determined by the Department, but not less than a period of time substantially equal to the length of the necessary delay, and any stipulated penalty shall not accrue. The Department shall inform the Hospital in writing of its approval.

68. In the event that the Hospital and the Department cannot agree that any delay or failure has been or will be caused by unforeseeable events or circumstances entirely beyond the control of the Hospital which could not be overcome by due diligence, or if there is no agreement on the length of the extension, the Department will notify the Hospital in writing of its decision and any delays in the completion of the deadline shall not be excused.

69. Enforcement of Deadlines. Deadlines and revised Deadlines for investigative, remedial, monitoring, sampling, and reporting work to be performed pertinent to the Site shall be effective, implemented, and enforceable, upon the dates directed or agreed to by the Department.

E. **Communication and Notification**

70. Principal Points of Contact. Work plans, reports, correspondence, approvals, disapprovals, notices, requests for supervisory review, and other submissions relating to or required by this Consent Order shall be in writing and shall be sent to the Principal Points of Contact for the Parties. The Department and the Hospital identify their respective Principal Points of Contact as follows:

The Department Principal Point of Contact	The Hospital Principal Point of Contact
<p>Christopher H. Ralston Program Administrator Oil Control Program Maryland Department of the Environment 1800 Washington Boulevard Baltimore, MD 21230 (410) 537-3470 (Telephone) (410-537-3092 (Fax) chris.ralston@maryland.gov</p>	<p>Kenneth D. Kozel President and CEO University of Maryland Shore Regional Health 219 S. Washington Street Easton, MD 21601 (410) 822-1000 x-5500 (Telephone) Ken.Kozel@umm.edu</p> <p>and</p> <p>Michael C. Powell Gordon Feinblatt LLC 233 E. Redwood Street Baltimore, MD 21202 (410) 576-4145 (Telephone) mpowell@gfrlaw.com</p>
The Department Case Manager	The Hospital Principal Case Manager
<p>Susan Bull Oil Control Program Maryland Department of the Environment 1800 Washington Boulevard Baltimore, MD 21230 (410) 537-3499 (Telephone) (410-537-3092 (Fax) susan.bull@maryland.gov</p>	<p>Dane S. Bauer HB Solutions 37534 Oliver Drive Selbyville, DE 19975 (410) 812-9109 (Telephone) dbauer@hallandbauer.com</p>

71. In the event the identity or contact information for a Principal Point of Contact changes, the Party with the changed information shall notify the other Party of the new information within ten (10) business days. Notifications shall be sent by any of the following methods: (a) hand delivery; (b) first class mail; (c) facsimile; (d) email; or (e) overnight mail by private courier. Notice shall be deemed delivered on the day on which it was received by the last recipient to which notice was addressed.

72. Town Officials. The Hospital shall provide the Town officials with copies of all reports and work plans associated with the cleanup and investigation activities for this case. The Department

shall provide the Town officials with copies of all requests for and approvals of reports and work plans associated with the cleanup and investigation activities for this case.

F. Permits

73. Unless expressly stated otherwise in this Consent Order, in any instance where otherwise applicable law or this Consent Order requires the Hospital to secure a permit to authorize construction or operation of any device, including all treatment, water appropriation, preconstruction, construction, and operating permits required under State law, the Hospital shall make such application in a timely manner.

74. The enforcement of all such permits shall be in accordance with their own terms.

G. Right of Entry

75. To ensure compliance with this Consent Order, the Department and any authorized representatives of the Department, including contractors, are authorized to enter and freely move about the Site, subject to the rights of quiet enjoyment held by the Hospital and/or any tenants at the Site, at all reasonable times and upon reasonable notice. Nothing herein shall be interpreted as limiting the inspection authority of the Department under Maryland law. The Department agrees that while at the Site, it and its representatives and contractors will comply with all applicable laws, regulations, ordinances, or procedures related to access to the Site, including, but not limited to, all security laws, regulations, and procedures, and any health and safety protocols and procedures established by the Hospital.

76. To the extent that work required by this Consent Order, the Approved CAP, or any amendments thereto, must be conducted on property that is not owned by the Hospital, the Hospital shall use its reasonable best efforts to obtain access agreements from the present owner(s) and/or lessee(s), as appropriate, of such property within sixty (60) days of receipt of notice of Department

approval of any plan submitted hereunder requiring such work. "Reasonable best efforts," as used in this Section shall include, at a minimum, but shall not be limited to, the Hospital sending a certified letter to the present owner(s) and/or lessees of such property requesting access agreements to permit the Hospital and its authorized representatives to enter such property for the purpose of performing sampling, monitoring, investigation or corrective actions. The Hospital shall, upon request, provide the Department with copies of all access agreements or such written requests for property access. The Hospital may redact confidential terms from such access agreements.

77. In the event that access agreements cannot be obtained within the time period set forth in the preceding paragraph, the Hospital shall promptly notify the Department in writing, indicating all efforts made to obtain such agreements, and the Department may, consistent with its legal authority, assist the Hospital in obtaining access. Where possible and within the limitations of State law, upon request of the Hospital, the Department may assist the Hospital by providing information and statements of support to governmental entities outside the direct supervision of the Land Management Administration. In the event that the Department obtains such access, the Hospital shall be obligated to reimburse the Department for any costs judicially awarded or reasonably incurred in the exercise of its authority. If the Hospital cannot obtain such access, the work required or the Approved CAP may be modified by mutual agreement between the Department and the Hospital to take account of the lack of such access.

DISPUTE RESOLUTION

78. The dispute resolution procedures of this Section of this Consent Order shall be the exclusive mechanism for the Hospital to raise and resolve disputes arising under or with respect to this Consent Order. Nothing herein shall be construed to prohibit the Department from exercising any other remedy available to the Department at law or equity to enforce the terms of this Consent Order.

79. Any dispute, which arises under or with respect to this Consent Order shall in the first instance be the subject of informal negotiations between the Parties in an attempt to resolve the dispute in good faith and an expeditious manner. The dispute shall be considered to have arisen when one party sends written Notice of Dispute to the other parties.

80. The Parties shall have thirty (30) calendar days following receipt of a Notice of Dispute to reach an agreement. The Hospital shall be entitled to meet jointly with the Department's Director of the Land Management Administration during this thirty (30) day period.

81. At the conclusion of the thirty (30) day period, the position advanced by the Department shall be considered binding on the Hospital, unless within twenty (20) calendar days following the conclusion of the informal dispute resolution procedures, the Hospital serves on the Department a written Statement of Position on the matter in dispute which shall include, but not be limited to, its proposed resolution, any factual data, analysis, opinion, or other supporting documentation relied upon by the Hospital.

82. Within twenty (20) calendar days following receipt of the Hospital's Statement of Position, the Department will serve on the Hospital its Statement of Position which shall include, but not be limited to, its proposed resolution, any factual data, analysis, opinion, or other supporting documentation relied upon by the Department.

83. A Record for Review shall be maintained by the Department and shall contain all Statements of Position, including all supporting documentation submitted pursuant to the Dispute Resolution provisions of this Consent Order.

84. Within fifteen (15) calendar days of receipt of the Department's Statement of Position, the Hospital may inspect the Record for Review and suggest supplementation of the Record with appropriate relevant documents.

85. The Department's Director of the Land Management Administration shall issue a written Statement of Decision to the Hospital resolving the dispute based on the Record for Review compiled pursuant to the Dispute Resolution provisions of this Consent Order. The Parties agree that any such written Statement of Decision shall be a Final Order of the Department pursuant to § 4-412 of the Environment Article of the Annotated Code of Maryland, and the Hospital may appeal an adverse decision under §§ 10-222 and 10-223 of the State Government Article of the Annotated Code of Maryland. Judicial Review of the Department's decision shall be based upon the Record for Review compiled pursuant to the Dispute Resolution provisions of this Consent Order.

86. Receipt of the Statement of Decision shall be binding on the Hospital unless the Hospital timely files with the appropriate court and serves on the Department a notice of judicial appeal in accordance with Title 7, Subtitle 2 of the Maryland Rules of Civil Procedure.

87. The invocation of formal dispute resolution procedures of this Consent Order shall not extend, postpone, or affect, in any way, any obligation of the Parties under this Consent Order not directly in dispute.

STIPULATED PENALTIES

88. Unless there has been a written modification of a requirement of this Consent Order by the Department, the Department may assess stipulated penalties for any failure by the Hospital to comply with the terms of this Consent Order, including any failure to perform investigative or remedial work or to meet any endpoint, completion date, deadline, submission date, and/or schedule set forth herein, set forth in the Approved CAP, or set forth by the Department in any Revised CAP, letter, directive, order, plan, approval, or amendments thereto, issued by the Department to the Hospital related to the subject matter of this Consent Order.

89. The Hospital shall pay stipulated penalties in the amount of five hundred dollars (\$500.00) per violation per day for the first 60 days, one thousand, five hundred dollars (\$1,500.00) for the 61st through 120th days, and two thousand, five hundred dollars (\$2,500.00) per violation per day for each day of noncompliance thereafter.

90. Every day that a violation exists constitutes a separate violation. All stipulated penalties that the Department chooses to assess shall begin to accrue on the day after the performance was due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is completed to the Department's satisfaction or until the violation ceases. Nothing in this Consent Order shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

91. The Hospital shall pay stipulated penalties within thirty (30) days after the Department's written demand. The stipulated penalty payment shall be made payable to the "Maryland Department of the Environment, Maryland Oil Fund" and shall be mailed to:

Maryland Department of the Environment
P.O. Box 1417
Baltimore, MD 21203-1417.

For proper credit of the payment, the Hospital shall reference "MDE Case 1987-2534-KE, Payment of Stipulated Penalty" on the payment or in its correspondence.

92. None of the stipulated penalties in this Consent Order shall be construed as an election of remedy or other limitation on the Department's discretion to seek, in lieu of stipulated penalties, any other remedy or sanction available to it for violations of this Consent Order or any other State law or regulation not expressly made the subject of this Consent Order.

93. The stipulated penalties provided for in this Consent Order shall be in addition to any other rights, remedies, or sanctions available to the Department by reason of the Hospital's failure to

comply with any requirement of this Consent Order or applicable law but shall be in lieu of statutory fines or penalties for failure to comply with any requirement of this Consent Order.

ENFORCEMENT

94. The parties agree that this agreement constitutes a Final Administrative Order enforceable in a judicial forum.

95. The Department can enforce the provisions of this Consent Order, including those related to statutory and regulatory requirements; investigative and remedial work; record keeping; reporting; and, endpoints, completion dates, deadlines, submission dates, and/or schedules set forth herein, set forth in the Approved CAP, or set forth by the Department in any letter, directive, order, plan, approval, or amendments thereto, issued by the Department to the Hospital related to the subject matter of this Consent Order.

96. In the event that the Hospital fails to comply with any provision of this Consent Order, the Department shall have the right to seek any and all legal and equitable remedies available to it for any violations that are the subject of this Consent Order, and any performance or payment of penalties are forfeited by the Hospital.

RELEASE

97. This Consent Order shall remain in force and effect, and shall operate to toll any civil statute of limitations, until the Hospital has paid any Stipulated Penalties which may have accrued during the term of this Consent Order, has completed all obligations set forth in and contemplated by this Consent Order, and the Department is satisfied that remediation on-Site and off-Site has been completed to an extent that is protective of public health and the environment, and the Department, in its sole discretion, will issue a "Final Closure Letter" pursuant to COMAR 26.10.01.05E pertaining to the Site.

98. Upon completion of the provisions in the preceding paragraphs, the Department agrees not to file claims for civil fines and penalties against the Hospital for the UST system equipment, maintenance, testing, operation, recordkeeping and oil pollution violations that were alleged or could have been alleged prior to the execution of this Consent Order, and the Department shall release the Hospital of responsibility for civil fines and penalties regarding the same.

RESERVATION OF RIGHTS

99. By executing this Consent Order, the Hospital waives its right to a hearing on any issue of law or fact set forth in this Consent Order. However, the Hospital has not waived such right that may exist for any separate action that may be brought by any third party for any alleged violations described herein.

100. Nothing in this Consent Order shall limit the authority of the Department to issue any orders or to take any action it deems necessary to protect the public.

101. The Hospital's installation and operation of UST systems at the Site after the execution of this Consent Order are not part of this Consent Order.

102. Any discharge of oil from the Site after the execution of this Consent Order will be deemed by the Department to be a separate case than its Oil Control Program Case No. 1987-2534-KE and is not part of this Consent Order.

103. The Department reserves, and this Consent Order is without prejudice to, all rights against the Hospital with respect to the following matters: civil and administrative enforcement actions for violations which occur after the effective date of this Consent Order; criminal enforcement actions, or violations of State law not arising from Title 4, Subtitles 4 through 7 of the Environment Article.

104. Nothing in this Consent Order shall be construed to prevent the Department from seeking any legal or equitable remedies available to it for violations of State law that are not the subject of this

Consent Order.

105. Nothing in this Consent Order shall be construed to relieve the Hospital of any violations or obligations under laws and regulations promulgated by or enforced by local, municipal, or federal entities.

106. The Hospital and the Department intend that nothing in this Consent Order shall be construed as a release or covenant not to sue any third party. Nothing contained in this Consent Order shall affect any right, claim, cause of action, or defense of any party, hereto with respect to third parties. The Hospital and the Department specifically reserve any and all rights, defenses, claims, demands, and causes of action that the Hospital and the Department may have against any third parties relating in any way to the subject matter in this Consent Order.

107. Neither the terms nor conditions of this Consent Order, nor any act of performance by the Hospital or the Department, shall collaterally estop the Department in any other proceeding with any third party.

108. This Consent Order does not and is not intended to create any rights, claims, or benefits for any third party. No third party shall have any legally enforceable rights, claims, or benefits under this Agreement, nor shall any third party have any rights to enforce the terms of this Agreement. No act of performance by the Hospital or the Department, nor forbearance to enforce any term of this Consent Order by the Department, shall be construed as creating any rights, claims, or benefits for any third party.

109. This Consent Order does not affect and is not intended to influence any third party's rights to independently investigate, evaluate, respond to, and file claims regarding any impacts from groundwater or drinking water pollution.

GENERAL PROVISIONS

110. Authority to Bind: By his signature below, Kenneth D. Kozel, on behalf of the Hospital, acknowledges that he is fully authorized to enter into this Settlement Agreement and Consent Order and to bind the Hospital to the terms and conditions of this Settlement Agreement and Consent Order.

111. Changes in Control of the Hospital: No change in ownership or legal status of the Hospital shall affect the Hospital's obligations under this Consent Order. In the event of any change in ownership or control of the Hospital, either through a sale of a majority of the assets, or other transfer of a majority interest, the Hospital shall notify the Department, in writing, within ninety (90) business days following the change, of the nature of the change and the effective date of the change. The Hospital shall provide an opportunity to review this Consent Order to any persons or entities acquiring a majority interest in the Hospital prior to the change in ownership or control.

112. Transfer of Site or Responsibility for Performance: The transfer of ownership or of any other interest in the Site, in whole or in part, to another entity, shall not alter or relieve the Hospital of its obligations to comply with all of the terms of this Consent Order and shall have no effect on the obligation of the Hospital for implementing all of the investigative and remedial actions in this Consent Order. As a condition to any such transfer of the Site, the Hospital shall reserve all access rights to the Site necessary to comply with the terms of this Consent Order. Any transfer of ownership or of any other interest in the Site, in whole or in part, without complying with the terms of this Paragraph constitutes a violation of this Consent Order.

113. The Hospital may, through contract, lease, agreement of sale, or other instrument, transfer responsibility for performance of some or all of the work required under this Consent Order to a third party, provided the Hospital remains liable for the oil contamination and work required to remediate such contamination in the event that the third party does not fully comply with the terms of this Consent

Order to the satisfaction of the Department. Except as set forth herein, the Hospital must notify the Department ten (10) days before entering into such an agreement with a third party. The Department may require that the third party agree to report directly to the Department, and shall approve the terms of any such transfer of responsibility to a third party. This paragraph is not intended to apply to the Hospital's retention of contractors or consultants to perform, or assist the Hospital in performing, the work.

114. Entire Agreement: This Consent Order constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order, and supersedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise not otherwise set forth herein or incorporated by reference herein shall constitute any part of this Consent Order or the settlement it represents, nor shall they be used in construing the terms of this Consent Order.

115. Modification: No modifications of this Consent Order, or any part thereof, shall be valid except by written amendment executed by the parties hereto.

116. Severability: The Hospital and the Department agree that if any of the provisions of this Consent Order contravene or are held to be invalid under any applicable law, such provisions shall not invalidate the Consent Order in its entirety, but the Consent Order shall be construed as if not containing the particular provisions, and all remaining obligations of the parties shall remain in effect and in force to the maximum extent reasonable.

117. Not a Permit: This Consent Order is not and shall not be construed to be a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Notwithstanding any provision of this Consent Order, the Hospital is responsible for achieving and maintaining complete

compliance with all applicable federal, State, and local laws, regulations, and permits; and the Hospital's compliance with this Consent Order shall be no defense to any action by the Department commenced pursuant to said laws, regulations, or permits, except to the extent the action is based on matters resolved through this Consent Order.

118. Applicable Law: The laws of the State of Maryland shall govern this Consent Order.

119. Effective Date: This Consent Order is effective upon signature by the Hospital and the Department.

IT IS SO AGREED AND CONSENTED TO:


**UNIVERSITY OF MARYLAND
SHORE REGIONAL HEALTH**



Kenneth D. Kozel
President and Chief Executive Officer

Date 5/11/16

Approved as to form and legal sufficiency
This _____ day of _____, 2016.



Michael C. Powell, Esq.
Gordon Feinblatt, LLC
233 East Redwood Street
Baltimore, Maryland 21202-3332
(410) 576-4175
Counsel for University of Maryland Shore Regional Health


**STATE OF MARYLAND,
DEPARTMENT OF THE ENVIRONMENT**



Hilary D. Miller, Director
Land Management Administration

Date 5/17/16

Approved as to form and legal sufficiency
This 17th day of May, 2016.



Priscilla N. Carroll
Assistant Attorney General
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Boulevard, Suite 6048
Baltimore, Maryland 21230-1719
(410) 537-3039; (410) 537- 3943 (fax)