



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

October 15, 2020

Mr. Kenneth D. Kozel
President and CEO
Shore Regional Health
219 South Washington Street
Easton, Maryland 21601

**RE: ALLEGED VIOLATIONS OF SETTLEMENT AGREEMENT AND
CONSENT ORDER**

**Case No. 1987-2534-KE
Chester River Hospital Center
100 Brown Street, Chestertown
Kent County, Maryland
Facility I.D. No. 3168**

Dear Mr. Kozel:

The Maryland Department of the Environment's (MDE) Oil Control Program (OCP) completed a review of the case file for the above-referenced property related to the unauthorized and undisclosed shutdown of the groundwater pump and treat remediation system. On May 17, 2016, University of Maryland Shore Regional Health (Shore Regional Health) and MDE entered into a Settlement Agreement and Consent Order (SACO) that specified certain work to be performed including maintaining the operation of the remediation system and providing notifications to MDE. On April 24, 2020, MDE issued a letter approving the controlled and monitored shutdown of the remediation system. On June 26, 2020, MDE postponed the shutdown after it became apparent the remediation system had been inoperable beginning in April 2020 and extending into June 2020 and that the shutdown had not been disclosed to MDE. In the June 26, 2020 communication, MDE required a full and clear accounting of the unauthorized shutdown. Shore Regional Health provided this documentation as requested on July 2, 2020, July 29, 2020, August 5, 2020, and August 27, 2020.

ALLEGED VIOLATIONS

MDE has reviewed all of the documentation provided by Shore Regional Health through its attorney and consultants. It is apparent that there are two main violations to the SACO that have occurred.

- Not maintaining operation of the remediation system as required by the SACO and incorporated documents until the time that MDE has approved it to be shut down. While MDE had in fact recently issued a letter on April 24, 2020 allowing for the system to be shut down, the letter had conditions to be met which had not yet occurred. In reviewing the

information presented by Shore Regional Health's consultants and MDE's own analysis, there is not a consensus on the exact dates in April 2020 that the system was off, but both estimates suggest the system was down for a total of 19 days during two periods. However, it is clear that the system was off from at least April 29, 2020 to June 3, 2020.

- Not informing MDE of the shutdown of the remediation system as required by the SACO and incorporated documents. As stated, MDE had issued a letter on April 24, 2020 allowing for the shutdown of the remediation system providing certain requirements were met. Chief among those requirements was communicating the path forward with the Mayor and Town Council of Chestertown. The meeting between Shore Regional Health and the Town occurred on June 15, 2020. Neither MDE or the Town were made aware of the equipment failure and remediation system shutdown until June 25, 2020.

Based upon the documentation provided, MDE notes that while there was a failure of the equipment and a failure of the internal and external communications, MDE did not find that there was an explicit intent to conceal the equipment failure and resultant remediation system shutdown. While there was not a disclosure of explicit intent to conceal the shutdown, MDE notes that in an email sent on April 29, 2020 by Brightfields, Inc., the environmental contractor in charge of operating the remediation system, to H&B Solutions, the SACO identified principal case manager, that Brightfields stated, "The system is currently off." The failure of the Shore Regional Health team to fully comprehend the meaning of this statement and the failure to subsequently inform MDE and the Town is not excusable.

PENALTY AND WORK TO BE PERFORMED

Based on MDE's review of the alleged violations, MDE is demanding a stipulated penalty pursuant to the SACO as follows:

- For the alleged violation of not maintaining operation of the groundwater pump and treat remediation system as required by the SACO and incorporated documents for the time period from at least April 29, 2020 to June 3, 2020 (36 days) at \$500.00 per day for each violation equates to \$18,000.00.
- For the alleged violation of not informing MDE of the equipment failure and the resulting shutdown of the groundwater pump and treat remediation system as required by the SACO and incorporated documents for the time period from at least April 29, 2020 to June 25, 2020 (58 days) at \$500.00 per day for each violation equates to \$29,000.00.

The total calculated penalty for both alleged violations that MDE is demanding is \$47,000.00. MDE reserves the right to seek stipulated penalties for all outstanding violations. However, MDE is offering to settle this matter for a reduced penalty of **\$10,000.00** due to actions already taken by Shore Regional Health and provided the following requirements are satisfied within the time periods mandated below.

Actions Already Taken

- On August 26, 2020, a review of prior remediation system down time was completed by Brightfields, Inc., for the period between June 2014 and August 2020. The review identified seven events, other than the event at the core of this matter, when the remediation system was off for various planned maintenance events or unplanned equipment failures. The system down time events ranged in duration from 1 to 19 days and 5 of the 7 events occurred in 2015.
- On September 1, 2020, Shore Regional Health notified MDE and the Town that a new consultant, Gannett Fleming, Inc., had been hired to manage all facets of the project including improved communications with MDE and the Town.
- On September 10, 2020, Gannett Fleming, Inc. installed and tested a remote telemetry monitoring system. The system is capable of providing notification when the remediation system fails to operate as designed.
- On September 21, 2020, Gannett Fleming, Inc. submitted a review of the remediation system with recommendations to increase operational efficiency and facilitate responses in the case of system failure. The proposed recommendations include the installation of sampling ports to better monitor the system efficiency and the purchase of two new pumps for the purpose of being readily accessible backups.
- On September 29, 2020, Gannett Fleming, Inc., implemented a revised communications plan in the event of a detection of measurable liquid phase hydrocarbons (LPH) or in the event of a treatment system outage.

Work to be Performed

The following actions must be taken immediately or as otherwise stated.

1. The treatment system may only be turned off for an extended time (i.e. other than routine intermittent maintenance during scheduled site visits) with the written approval of MDE. This includes significant time (i.e. greater than 24 hours) to repair or replace equipment and the shutdown previously authorized by MDE's April 24, 2020 letter. At the present time, a minimum of two quarters of natural attenuation monitoring and reporting must take place before MDE will allow the remediation system shutdown to occur. MDE understands the initial natural attenuation sampling is planned to occur in mid-October 2020.
2. If the remediation system fails to operate for more than 24 hours, for any reason, it must be reported to MDE. Once operation of the remediation system is restored, a summary of the cause of the system failure, repairs made, and total system downtime must be provided to MDE within five days of system reactivation.

3. In addition to the summary required in Item 2, a summary of the remediation system downtime must be included in the quarterly reports.
4. If a new occurrence or uncharacteristic increase in the amount of LPH is observed relative to historic site data, or if measurable amounts of LPH are detected in any monitoring point at a thickness greater than 0.01 foot (e.g. "sheen" or "film"), findings must be reported to MDE within 2 hours of discovery by calling OCP at 410-537-3442 during standard business hours, or the Emergency Response Division hotline at 1-866-633-4686.
5. By October 31, 2020, implement the recommendations in the September 21, 2020 letter from Gannett Fleming, Inc.

This letter is not a waiver or limitation on the MDE's right to take enforcement or other action in the future based upon contamination at and around the site. MDE and the State of Maryland retain all authority and rights to seek all available relief, including equitable relief and damages of any nature, such as compensatory and natural resource damages, for contamination at and around the site.

Shore Regional Health may settle this matter by performing the above required corrective actions and submitting a check in the amount of **\$10,000.00**, payable to the **Maryland Oil Fund**, within 30 days of receipt of this letter to:

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

Please reference "Facility I.D. No. 3168, Case No. 1987-2534-KE, Payment of Penalty" on the payment or in its accompanying correspondence.

If you decline this settlement offer, the matter may be referred to the Office of the Attorney General for possible action. Any subsequent violations will subject you to separate civil action. Therefore, you are advised to maintain operations in compliance with Maryland laws and regulations. Direct any questions or comments concerning this matter to Mr. Christopher Ralston at 410-537-3470 or chris.ralston@maryland.gov.

Sincerely,



Kaley Laleker, Director
Land and Materials Administration

cc: Michael Powell, Esq., Gordon Feinblatt, LLC
Julie Kuspa, Esq., Office of the Attorney General

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Ms. Lindley Campbell, Case Manager, Remediation Division, Oil Control Program
Ms. Susan R. Bull, Eastern Region Supervisor, Remediation Division, Oil Control Program
Mr. Andrew B. Miller, Chief, Remediation Division, Oil Control Program
Mr. Christopher H. Ralston, Program Manager, Oil Control Program