
**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY**

IN THE MATTER OF:

IHC Health Services, Inc.
36 South State Street, Suite 2200
Salt Lake City, Utah 84111

STIPULATED COMPLIANCE ORDER

Docket No. I20-15

This Stipulated Compliance Order (“Agreement” or “Order”) is entered into voluntarily by and between the Director of the **Utah Division of Water Quality** (“Director”), under the Director’s legal authorities described below and **IHC Health Services, Inc.** (“Intermountain”) in its capacity as the “Operator” who is legally responsible for the operation of **Utah Valley Hospital** located in Provo, Utah (the “Facility”), jointly referred to hereafter as the “Parties.” By entering into this Agreement, the Parties wish, without further administrative or judicial proceedings, to establish compliance requirements and stipulate to civil penalties arising out of alleged violations of the Utah Water Quality Act, Utah Code Section 19-5-101 through 19-5-126 (the “Act”), and corresponding regulations in the Utah Administrative Code R317-1-1 through R317-801-6 and R305-7-101 through R305-7-611.

STATUTORY AND REGULATORY AUTHORITY

1. The Director has authority to administer the Act pursuant to Utah Code § 19-1-105(1)(e), and to enforce the Utah Water Quality Rules in Utah Administrative Code R317 through the issuance of orders and notices of violation, as specified in Utah Code §§ 19-5-106(2)(d) and 19-5-111. The Director also has authority to settle any civil action initiated to compel compliance with the Act and implementing regulations pursuant to Utah Code § 19-5-106(2)(k).

FACTS AND FINDINGS

The Director relies upon the following Facts and Findings for the purposes of this Agreement:

1. Intermountain is a domestic not for profit corporation doing business in Provo, Utah as Utah Valley Hospital.
2. Intermountain is a “person” as that term is defined in Utah Code § 19-1-103(4).
3. Intermountain operates a dewatering sump system within the parking structure located on the northeast corner of the Facility. Because the parking structure is partially below grade and due to the high water table in the area, the sump system must continuously pump groundwater to prevent flooding the structure. The pumped water is discharged

into the stormwater system which discharges to the Provo River (outfall), approximately 600 yards to the west of the Facility. The dewatering system serves an operational purpose and protects the integrity of the structure.

4. The Facility also operates a diesel fuel underground storage tank (“UST”) system that provides fuel for the Utah Valley Outpatient Center heating boilers and emergency generator. The UST system contains a 15,000-gallon UST and associated piping located approximately 40 feet east of the northeast corner of the parking structure.
5. On December 3, 2020, an Intermountain security guard noticed a diesel odor in the parking structure. Upon investigating, Facility management visually confirmed that red dyed diesel fuel from the UST system was impacting the Facility’s dewatering sump system. Given the continuous operation of the sump system, Facility management also confirmed an impact to the storm drain and downstream surface water. It was later determined that an estimated 1,700 gallons of diesel fuel was released from the UST.
6. On December 3, 2020, Intermountain submitted an incident report through the National Response Center and concurrently notified the Division of Environmental Response and Remediation (“DERR”).
7. On December 8, 2020, Intermountain provided a follow up written notice of the release to the Utah Division of Water Quality (the “Division”). The notification stated that a hydrocarbon sheen and an odor of diesel fuel was discovered in the storm drain located in the parking structure.
8. Intermountain later confirmed that the release came from a fuel line in a transition sump that is part of the UST system. Intermountain determined that a fitting in this fuel line had corroded and caused the release of diesel fuel into the subsurface gravel and soil near the sump system. As a result, the dewatering sump pumped an unknown amount of diesel fuel-laden groundwater into the storm drain, which was then released into the Provo River.
9. The contaminated discharge had a detectable odor and created a visible sheen on the surface of the Provo River. Water samples collected from area groundwater and the Provo River contained detectable amounts of diesel-range organic compounds and xylenes for, at minimum, twelve (12) days. Specifically, after the release on December 3rd, the Division pulled samples on December 4, 2020 and December 10, 2020 at various locations, and laboratory analyses detected diesel-range organics and xylenes (8 days). Additionally, analytical results for samples pulled by Intermountain at the groundwater sump and from the Provo River outfall contained detectable amounts of diesel-range organic compounds on December 11, 2020, February 15, 2021, March 23, 2021, and April 5, 2021 (4 days).
10. On December 3, 2020, Intermountain engaged Wasatch Environmental, Inc. to assist with the mitigation work, and contracted EnviroCare to respond to the release and assist with the cleanup. EnviroCare placed absorbent booms and pom-poms for treatment in

the sump itself, the first downstream manhole/catch basin at the entrance to the Facility, and at the Provo River Outfall. It also placed three booms across the Provo River immediately downstream of the outfall. Provo City Fire Department, in conjunction with the Central Utah Water Conservancy District, placed absorbent booms in the Provo River at Geneva Road and reported that no sheen was observed on the river downstream of that point.

11. The Director issued a Notice of Violation and Compliance Order, Docket Number I20-15 (the “NOV/CO”) to Intermountain on March 30, 2021. In the NOV/CO, the Director alleged that Intermountain violated Utah Code § 19-5-107 for discharging a pollutant into waters of the State.
12. On April 29, 2021, Intermountain timely complied with the NOV/CO requirements.
13. Intermountain implemented clean up and remediation activities with oversight by DERR and completed the following: 1) repaired the leaking underground storage tank (“LUST”); 2) completed a surface and subsurface investigation that delineates the extent and degree of contamination; and 3) cleaned up and remediated contaminated groundwater and soils caused by the LUST. Intermountain replaced the UST sumps and line where the leak occurred in early February 2021. It also upgraded the leak detection equipment to detect potential leaks in parts of the system that previously did not have leak detection. Intermountain is currently implementing final monitoring to obtain site closure from DERR.

ORDER

Based upon the foregoing Facts and Findings, the Agreement of **IHC Health Services, Inc.** and good cause appearing, the Director orders as follows:

1. A penalty in the amount of \$45,330.00 and associated investigative costs in the amount of \$9,099.55 are appropriate based on the circumstances in conformance with the penalty policy outlined in Utah Administrative Code R317-1-8. Intermountain shall pay a total of **\$31,764.55** in penalty and investigative costs, with the remainder (\$22,665.00) held in abeyance as described below. Payment is to be made **within thirty (30) calendar days** of the Effective Date of this Agreement (defined below), using one of the following options:

- a. CHECK – Payable to the Division of Water Quality. The payment shall be sent to:

Division of Water Quality
PO Box 144870
Salt Lake City, Utah 84114-4870

- b. ACH BANK TRANSFER – Contact the Division of Water Quality Finance staff at eqwqfinance@utah.gov for wiring instructions.

2. The Director agrees to hold in abeyance \$22,665.00 in civil penalties, so long as Intermountain:
 - i. Meets all payment terms outlined in Item 1 of this Order.
 - ii. Continues to comply with the DERR process related to removing or remediating area contaminated soils and groundwater, as necessary for site closure.
 - iii. **Within thirty (30) calendar days** from site closure, submits to the Director a copy of the final notification from DERR that verifies the completion of all requirements.
 - iv. **Within sixty (60) calendar days** from the Effective Date of this Agreement, submits, for Director's approval, a contingency plan or equivalent plan that outlines the measures Intermountain has taken or plans to take to prevent future releases from the Facility UST from migrating into groundwater, the dewatering sump system and the stormwater system.
3. If Intermountain fails to comply with the terms in Item 2 of this Order, the \$22,665.00 penalty amount will no longer be held in abeyance and shall become due and payable to the State of Utah **within thirty (30) calendar days** of written notification by the Division, in addition to any penalties triggered by additional enforcement action(s) resulting from new violations.

GENERAL PROVISIONS

1. The Parties recognize that this Agreement has been negotiated in good faith and nothing herein constitutes an admission of any liability. Intermountain does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the facts and violations alleged in the NOV/CO. Intermountain further agrees it will not contest the basis or validity of this Order or its terms.
2. The violation described herein will constitute part of Intermountain's compliance history where such history is relevant, including any subsequent violations. Intermountain understands and agrees that this Agreement is not and cannot be raised as a defense to any other action to enforce any federal, state, or local law.
3. Intermountain agrees to the terms, conditions, and requirements of this Order. By signing this Order, Intermountain understands, acknowledges, and agrees that it waives: (1) the opportunity for an administrative hearing pursuant to Utah Code § 19-1-301; (2) the right to contest the finding(s) in the NOV/CO; and (3) the opportunity for judicial review.

4. This Agreement is subject to a thirty (30) day notice and comment period. The Parties each reserve the right to withdraw from this Agreement if comments received during the notice period result in a modification to the terms and conditions.
5. This Order includes a civil penalty in excess of \$25,000 and therefore must be presented to, reviewed by, and approved or disapproved by the Utah Water Quality Board (the “Board”). Utah Code § 19-5-104(3)(h). Final approval by the Director of this Order shall not occur until it is approved by the Board. The Order will not be presented to the Board for final action until after the Division has provided public notice of the proposed Order and has solicited and reviewed any public comments received. All public comments, and the Director’s responses, shall be provided to the Board in connection with the Director’s request for final action. The “Effective Date” shall be the date this Order is signed by the Director after it is formally approved by the Board.
6. The dates set forth in the Order section of this Order may be extended in writing by the Director, in the Director’s sole discretion, based on a showing of good cause by Intermountain. Good cause for an extension generally means events outside of the reasonable control of Intermountain, such as force majeure, inclement weather, contractor or supplier delays, and similar circumstances. However, the Director expects Intermountain to employ reasonable means to limit foreseeable causes of delay. The timeliness of Intermountain’s request for an extension shall constitute an important factor in the Director’s evaluation.
7. Nothing in this Order shall preclude the Director from taking actions to include additional penalties against Intermountain for future violations of State or Federal law.
8. The Parties acknowledge that neither the Director nor the Board has jurisdiction regarding natural resource damage claims, causes of action, or demands. Therefore, such matters are outside the scope of this Order.
9. The person signing this Order on behalf of Intermountain represents to the Director that they have the full legal authorization to do so and agrees that the Director may rely on that representation.
10. This Agreement is binding upon each of the Parties and their respective heirs, successors, and assigns. Any change in ownership or corporate or legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Parties under this Agreement.
11. This Order may be amended in writing if signed by both Parties.

COMPLIANCE AND PENALTY NOTICE

As of the Effective Date, this Order shall constitute a final administrative order. Compliance with

the provisions of this Order is mandatory. All violations of the Utah Water Quality Act, the Water Quality Rules, and this Order will be strictly enforced during the time that this Order remains in effect. The Utah Water Quality Act, Utah Code § 19-5-115, provides that any person who violates a rule or order made or issued pursuant to the Act may be subject, in a civil proceeding, to a state district judge imposing a civil penalty per day of violation.

[SIGNATURE PAGE FOLLOWS]

IT IS SO AGREED AND ORDERED:

FOR THE UTAH DIVISION OF WATER QUALITY

By: _____

John K. Mackey, P.E.
Director

Date: _____ (Effective Date)

FOR IHC HEALTH SERVICES, INC.

Nannette Berensen
VP COO-Shared Clinical Services

Date: December 15, 2022