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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

MAR 25 2020

Nicole Wilkinson
Director Corporate Environmental
CVS
One CVS Drive
Woonsocket, RI 02895

RE: NOTICE OF VIOLATION WITH PROPOSED PENALTIES
CVS PHARMACY #5494
EPA ID# NMR000002014

Dear Ms. Wilkinson:

On January 9, 2020, the New Mexico Environment Department (“NMED”) conducted a hazardous waste Compliance Evaluation Inspection (“Inspection”) at CVS Pharmacy #5494 (“CVS”), located at 1500 Tramway Blvd NE, Albuquerque, New Mexico (“Facility”). CVS is a retail store and pharmacy that sells food, health and beauty products, and other retail items in addition to operating a pharmacy that sells prescription medicines. CVS generates hazardous wastes from damaged and returned retail products, in addition to dropped pills, damaged pharmaceuticals, and expired pharmaceuticals that are generated in the pharmacy.

Based on observations and review of the information provided by CVS dated February 10, 2020, NMED has determined that your facility is a Large Quantity Generator of hazardous waste as defined in 40 Code of Federal Regulations (“CFR”) 262.13 and that CVS has violated the New Mexico Hazardous Waste Management Regulations (“HWMR”) 20.4.1 New Mexico Administrative Code (“NMAC”) as specified below.

The NMED inspector observed the following violations:

1. Failure to label satellite accumulation area (“SAA”) containers with the words “Hazardous Waste”, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(5)(i). Specifically, NMED Inspectors observed one SAA for damaged goods by

the cash registers and two unlabeled SAAs (blue bins) in the pharmacy that were not labeled as hazardous waste.

Corrective Action: CVS must ensure that SAA containers are labeled prior to storing any hazardous wastes, and provide documentation, such as photographs, to NMED that the corrective actions have been implemented.

CVS Response: "The CVS hazardous waste management program does not utilize any satellite storage areas at store level."

NMED Comment: Although CVS may not include satellite accumulation areas at the store level in their hazardous waste management program, NMED has inspected several stores that are storing damaged/returned goods by the cash registers located in the front of the store, thereby creating an SAA. CVS might be able to return some of these items to the shelf but damaged goods that meet the definition of hazardous waste such as the bottle of CVS Nighttime Severe Cold and Flu medicine observed during this inspection, should have been labeled as hazardous waste.

2. Failure to label satellite accumulation containers with hazard indicators, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(5)(ii). Specifically, one SAA by the cash registers for damaged goods and two SAAs in the pharmacy were not labeled with hazard indicators.

Corrective Action: CVS must ensure that all SAA containers are properly labeled with hazard indicators and provide documentation, such as photographs, that all blue plastic bins have been labeled properly.

CVS Response: "The CVS hazardous waste management program does not utilize any satellite storage areas at store level."

NMED Comment: Although CVS may not include satellite accumulation areas at the store level in their hazardous waste management program, NMED has inspected several stores that are storing damaged/returned goods by the cash registers located in the front of the store, thereby creating an SAA. Such SAA containers should be labeled with the proper hazard indicators.

3. Failure to keep satellite accumulation containers closed, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(4). Specifically, one SAA by the cash register storing damaged goods was open.

Corrective Action: CVS must ensure that all SAA containers are kept closed, except for when adding, removing, or consolidating waste. Please provide NMED documentation that the bins are closed.

CVS Response: "The CVS hazardous waste management program does not utilize any satellite storage areas at store level."

NMED Comment: Although CVS may not include satellite accumulation areas at the store level in their hazardous waste management program, NMED has inspected several stores that are storing damaged/returned goods by the cash registers located in the front of the store, thereby creating an SAA.

4. Failure to conduct weekly inspections of central accumulation areas, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.17(a)(1)(v). Specifically, weekly inspections of the central accumulation area had not been conducted for several weeks in October, November and December of 2018 and January and February 2019.

Corrective Action: CVS must conduct weekly inspections of central accumulation areas and provide documentation to NMED that the corrective action has been completed.

CVS Response: CVS provided electronic copies of weekly inspections for Dec 30, 2019-February 2, 2020.

NMED Comment: CVS did not provide copies of the missing weekly inspections.

5. Failure to properly label hazardous waste containers, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.17(a)(5)(i)(B). Specifically, hazardous waste containers are labeled with all possible hazards rather than the specific hazard related to the waste in the bin.

Corrective Action: CVS must provide documentation, such as photographs, that all plastic bins have been labeled properly.

CVS Response: CVS provided pictures of the containers with the same labels observed during the inspection.

NMED Comment: Hazardous waste containers are labeled with all possible hazards rather than the specific hazard related to the waste in the bin.

6. Failure to provide position descriptions for staff managing hazardous waste, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.17(a)(7)(iv)(B). Specifically, position descriptions were not available for any employees managing hazardous waste.

Corrective Action: CVS must provide NMED with position description documentation for all employees managing hazardous waste.

CVS Response: CVS provided the job position descriptions for employees managing hazardous waste.

NMED Comment: CVS provided the information in their response dated February 10, 2020.

7. Failure to provide training records for staff managing hazardous waste, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.17(a)(7)(v). Specifically, training records for Joe Sandoval, Christina Thomas, James Lujan, Karen Graham, and McArthur Marano were not available for review.

Corrective Action: CVS must provide NMED training documentation for the employees identified above.

CVS Response: CVS provided the training records for employees managing hazardous waste.

NMED Comment: CVS provided the information in their response dated February 10, 2020.

8. Failure to include evacuation routes in the contingency plan, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.261(f). Specifically, no evacuation routes were included in the contingency plan.

Corrective Action: CVS must ensure that the contingency plan includes the evacuation routes specific to this Facility and provide documentation to NMED that the corrective actions have been implemented.

CVS Response: CVS provided a copy of the evacuation route.

NMED Comment: CVS provided NMED a copy of the map with evacuation routes in their response dated February 10, 2020, completing the corrective action; however, it was not available at the time of the inspection.

9. Failure to provide the contingency plan to local emergency responders, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.262(a). Specifically, CVS has not provided local emergency responders with copies of the contingency plan.

Corrective Action: CVS must provide the contingency plan to local emergency responders and provide NMED documentation that this has been completed.

CVS Response: CVS provided copies of the letters notifying local authorities in 2014 with a copy of the Contingency Plan dated 2016.

NMED Comment: The Contingency Plan and all revisions are required to be provided to the local authorities. It appears that the 2016 version of the Contingency Plan was not provided the local authorities. Additionally, the Emergency Coordinator has changed in the last 6 months and this information has not been provided to local authorities.

10. Failure to provide a Quick Reference Guide ("QRG") to local emergency responders, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.262(b). Specifically, a QRG has not been provided to local emergency responders.

Corrective Action: CVS must ensure that the local emergency responders are provided a QRG specific to this Facility and provide documentation to NMED that the corrective actions have been implemented.

CVS Response: CVS provided a copy of the Contingency Plan dated 2016 and stated a QRG was not required because the store had been a LQG since 2014.

NMED Comment: The rule states that a LQG that first becomes subject to these provision after May 30, 2017 or a LQG that otherwise amending its contingency plan must at that time submit a QRG to local emergency responders. The Emergency Coordinator at this store has changed in the last 6 months; therefore, the Contingency Plan should have been amended and a QRG provided to local emergency responders.

The NMED Inspector had the following area of concern:

The pharmacist on duty stated that CVS is reverse distributing pharmaceuticals prior to the pharmaceutical expiring; however, during the inspection, expired pharmaceuticals were observed in the box destined for the reverse distributor. None of the expired pharmaceuticals in the reverse distributor box met the definition of a hazardous waste, but CVS is reminded that pharmaceuticals, when expired, are considered to be a hazardous waste and must be managed as hazardous waste in New Mexico and cannot be reverse distributed.

NMED is requiring that CVS provide to NMED within thirty (30) days of receipt of this letter a written description of the actions taken by CVS to address the violations described above or a schedule for implementation of corrective actions not yet completed.

In accordance with New Mexico Statutory Authority 1978, Section 74-4-10, NMED may: (1) issue a Notice of Violation requesting voluntary compliance within a specified time period; (2) issue a Compliance Order requiring compliance immediately or within a specified time period or assess a civil penalty for any past or current violations of up to \$10,000 per day of non-compliance for each violation, or both; or (3) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction.

Ms. Wilkinson
Inspection Date: January 9, 2020
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Due to CVS's past history of noncompliance with 20.4.1 NMAC, NMED will propose a civil penalty for these violations in a separate Notice of Proposed Penalty letter, a settlement privileged document.

If you have any questions regarding this letter, please contact Janine Kraemer of my staff at 505-476-4372 or by email at Janine.kraemer@state.nm.us. Please address any written response to the attention of Janine Kraemer at the address on the letterhead.

Sincerely,



for
Kevin Pierard
Chief
Hazardous Waste Bureau

KP: jk

cc: Janine Kraemer, NMED HWB
John Rhoderick, NMED District Manager
Jennifer Hower, NMED OGC
Samantha Surette, Store Manager, Samantha.surette@cvshealth.com

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