

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations
of Article 27 of the New York State
Environmental Conservation Law,
and Title 6, Part 360
et seq. of the Official
Compilation of Codes, Rules and
Regulations of the State of New York,

ORDER ON CONSENT
File No. R4-2008-1022-151

- by -

Cardinal Health 414, LLC

Respondent

WHEREAS:

1. The Department of Environmental Conservation ("DEC" or "the Department") is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, inter alia, ECL § 3-0301. In particular, DEC has jurisdiction over the permitting and operation of solid waste management facilities pursuant to Article 27 of the New York State Environmental Conservation Law (ECL).

2. Pursuant to authority granted to the Department under ECL Article 27, rules respecting the permitting, registration and operation of solid waste management facilities were promulgated at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), Part 360 et seq.

3. Respondent, Cardinal Health 414, LLC, is a radiopharmaceutical facility located at 7 Walker Way, Colonie, New York "facility."

4. Regulations at 6 NYCRR 360-1.7(a)(1)(i) provide that: (1) Except as provided for in subdivisions (b) and (c) of this section, section 360-1.13 of this Subpart or otherwise provided for in the applicable Subpart pertaining to the type of solid waste management facility in question, no person shall:

(i) construct or operate a solid waste management facility, or any phase of it, except in accordance with a valid permit issued pursuant to this Part; or

(ii) modify or expand any aspect of the approved construction or operation of a solid waste management facility except in accordance with the approval of the department.

5. Regulations at 6 NYCRR 360-1.8(f)1(1) provide in part that: “*Any permittee intending or required to continue construction or operation beyond the permitted period must file a complete application for renewal of the permit at least 180 days before the existing permit expires.*”

6. Respondent’s permit for regulated medical waste storage, transfer and disposal for this facility expired on October 2, 2008. The Department received a permit renewal application on October 2, 2008. Respondent did not file their application at least 180 days before the existing permit expired, as required by 6 NYCRR 360-1.8(f)1(1).

7. Respondent violated regulations at 360-1.7(a)(1)(i) by operating a solid waste management facility without a permit.

8. ECL § 71-2703 provides that any violator of Articles 3 or 7 of the provisions of Article 27 of the ECL cited in this Order, or any rule or regulation issued pursuant thereto, is subject to penalties of up to Seven thousand five hundred dollars (\$7,500) for each violation and an additional penalty of not more than \$1,500 per day during which the violation continues and may be enjoined from continuing such violation.

9. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, having considered this matter and being duly advised, it is ORDERED that:

Civil Penalty

I. With respect of the aforesaid alleged violations, a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) of which ONE THOUSAND DOLLARS (\$1,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance (\$4,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

Payment of the above penalties shall not in any way alter Respondent’s obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the

entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for it.

III. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, her directors, officers, employees, servants, agents, successors or assigns.

IV. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

V. This Order is deemed effective on the date signed by the Department.

VI. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, their agents, servants, employees, successors and assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondents waive all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondents.

VII. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations alleged in this Order.

DATED: _____, 2008
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives their rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Cardinal Health 414, LLC

Authorized Representative _____

SIGNED: _____

TITLE: _____

DATE: _____

STATE OF _____)

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)ss.:

COUNTY OF _____)

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On the ___ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for the State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Qualified in the County of:

My Commission Expires: