

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

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Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0754

January 8, 2015

Dale Desnoyers, Esq.
Allen & Desnoyers LLP
90 State Street
Suite 602
Albany, NY 12207

Re: CVS Caremark
Order of Consent
R4-2014-0122-9

Dear Mr. Desnoyers:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$25,151 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: A. Elliott
H. Brezner
J. Quinn

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 27,
Title 13 of the Environmental Conservation Law;

-by-

ORDER ON CONSENT
File No. R4-2014-0122-9

CVS Caremark
One CVS Drive
Woonsocket, RI 02895

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for regulation of hazardous waste management pursuant to Article 27, Title 13 of the Environmental Conservation Law (the "ECL").
2. On July 25, 2013, Department staff conducted an inspection of CVS Store #5035 located at 1204 Eastern Avenue, Schenectady, New York, 12308 ("Store #5035").
3. On August 21, 2013, Department staff conducted an inspection of CVS Store #5034 located at 100 Main Street, Cooperstown, New York, 13326 ("Store #5034").
4. On August 26, 2013, Department staff conducted an inspection of CVS Store #0441 located at 259 Saratoga Road, Glenville, New York, 12302 ("Store #0441").
5. On August 27, 2013, Department staff conducted an inspection of CVS Store #7326 located at 726 E. Main Street, Cobleskill, New York, 12043 ("Store #7326").
6. On September 12, 2013, Department staff conducted an inspection of CVS Store #5019 located at 215 Delaware Street, Walton, New York, 13856 ("Store #5019").

Violations at Store #5035

7. Regulations at 6 NYCRR §373-3.9(f) provide that "*containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility property line.*"
8. At the time of the July 25, 2013 inspection, Department staff determined that the storage area in the back room had four boxes which contained return products which included aerosol cans and items with solvents/alcohols. These wastes are ignitable characteristic hazardous waste and are being stored less than 50 feet from the store's property line, which is in violation of regulations at 6 NYCRR §373-3.9(f).

9. Regulations at 6 NYCRR §373.3.9(f) requires generators to comply with the following: *“No Smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive wastes.*”

10. At the time of the July 25, 2013 inspection, Department staff determined that the store was storing ignitable characteristic waste in their back room without any *“No Smoking”* signs in the building, which is in violation of regulations at 6 NYCRR §373.3.9(f)

11. Regulations at 6 NYCRR §372.2(b)(1) require a *“a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a manifest on EPA Form 8700-22, and if necessary, EPA Form 8700-22A, according to the manifest instructions included in Appendix 30 of this Title.”*

12. At the time of the July 25, 2013 inspection, Department staff observed that the EPA Identification Number listed on the manifest #006493425 for the generator was *“CESQG”* instead of the store’s actual identification number (NYR000196089), which is in violation of regulations at 6 NYCRR §372.2(b)(1).

13. Regulations at 6 NYCRR §372(b)(2)(i) provide that *“prior to shipment of hazardous waste off the site at which such waste was generated, the generator must designate on the manifest one facility which is authorized to handle the waste described on the manifest. A generator may also designate on the manifest one alternate facility which is authorized to handle the waste in the event an emergency prevents delivery of the waste to the primary designated facility. The generator must confirm by written communication from the designated treatment, storage or disposal facility and alternate treatment, storage or disposal facility that it is authorized to handle the particular hazardous waste described on the manifest.”*

14. At the time of the July 25, 2013 inspection, Respondent could not produce any written documentation to establish that *Stericycle* is authorized to accept Respondent’s hazardous waste, which is in violation of regulations at 6 NYCRR §372(b)(2)(i).

15. Regulations at 6 NYCRR §372.2 (b)(2)(iii) require that the generator must *“confirm by written communication from the designated transporter(s) that they are authorized to deliver the manifested waste to the designated treatment, storage or disposal facility.”*

16. At the time of the July 25, 2013 inspection, Respondent could not produce any written documentation showing that *Stericycle, Freehold Cartage, and 21st Century Environmental* are authorized to haul Respondent’s hazardous waste, which is in violation of regulations at 6 NYCRR §372.2 (b)(2)(iii).

17. Regulations at 6 NYCRR §373-3.2(g)(4)(ii) require that the owner or operator must maintain at the facility, *“a written job description for each position listed under subparagraph (i) of this paragraph. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education or other qualifications, and duties of employees assigned to each position.”*

18. At the time of the July 25, 2013 inspection, Respondent could not produce written job descriptions for all of the positions related to hazardous waste management, which is in violation of regulations at 6 NYCRR §373-3.2(g)(4)(ii).

19. Regulations at 6 NYCRR §373-3.2(g)(4)(iii) require that the owner or operator must maintain at the facility, *“a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under subparagraph (i) of this paragraph.”*

20. At the time of the July 25, 2013 inspection, Respondent could not produce any description of the type and amount of introductory training given to each person involved with hazardous waste management, which is in violation of regulations at 6 NYCRR §373-3.2(g)(4)(iii).

21. Regulations at 6 NYCRR §373-3.3(f) require that the owner or operator must *“maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency unless aisle space is not needed for any of these purposes.”*

22. At the time of the July 25, 2013 inspection, the four boxes holding hazardous waste in the back storeroom were blocked by products stored in front and next to them. To access the waste containers, these products had to be moved, therefore there was no aisle space which allowed unobstructed access to the waste containers, which is in violation of regulations at 6 NYCRR §373-3.3(f).

23. Regulations at 6 NYCRR §373-3.3(g)(1) require that *“the owner or operator must attempt to make the following arrangements as appropriate for the type of waste handled at the owner or operator's facility and the potential need for the services of these organizations:*

(iv) arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.”

24. At the time of the July 25, 2013 inspection, Department staff determined Respondent had not made arrangements to familiarize the local hospitals with the properties of Respondent's hazardous waste handled at its facility and the type of injuries/illnesses that could result from exposure to the hazardous waste, which is in violation of regulations at 6 NYCRR §373-3.3(g)(1)(iv).

25. Regulations at 6 NYCRR §373-3.4(c)(4) provide that each owner/operator must have a contingency plan for the facility which *“must list names, addresses, and phone numbers (office and home) of all persons to act as emergency coordinator (see subdivision (f) of this section), and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.”*

26. At the time of the July 25, 2013 inspection, Department staff determined that Respondent's contingency plan did not list the names, addresses and telephone numbers of all persons designated to act as emergency coordinators, which is in violation of regulations at 6 NYCRR §373-3.4(c)(4).

27. Regulations at 6 NYCRR §373-3.4(c)(5) provide that the contingency plan for the facility must *“include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up-to-date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.”*

28. At the time of the July 25, 2013 inspection, Department staff determined that Respondent's contingency plan did not contain a list or description of emergency equipment, its location at the store, or an outline of the equipment's capacity, all of which are violations of regulations at 6 NYCRR §373-3.4(c)(5).

29. Regulations at 6 NYCRR §373-3.2(e)(1) provide that *"universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste - Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."*

30. At the time of the July 25, 2013 inspection, Department staff determined that Respondent had one container holding approximately one pound of a mixture of batteries (mercury, lithium, and alkaline) which was located in the front of the store under one of the counters and not marked with the appropriate words, which is in violation of regulations at 6 NYCRR §373-3.2(e)(1).

31. Regulations at 6 NYCRR §374-3.2(f)(1) provide that *"a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (2) of this subdivision are met."*

32. At the time of the July 25, 2013 inspection, Department staff determined that the mixture of batteries cited in paragraph #30 had been stored there for more than one year and Respondent was not able to show that the batteries had been stored for more than one year to facilitate proper recovery, treatment or disposal of these batteries, which is in violation of regulations at 6 NYCRR §374-3.2(f)(1).

33. Regulations at 6 NYCRR §374-3.2(f)(3) require that a handler must *"be able to demonstrate the length of time that the universal waste has been accumulated by marking the date, maintaining an inventory, or any other method."*

34. At the time of the July 25, 2013 inspection, Department staff determined that the mixture of batteries cited in paragraph #30 were not marked with an accumulation start date and Respondent could not locate a shipping document to show when they had last shipped waste batteries offsite, nor could Respondent demonstrate an inventory system identifying when the first battery had been placed in the container, all of which are in violation of regulations at 6 NYCRR §374-3.2(f)(3).

Violations at Store # 5034

35. Regulations at 6 NYCRR §373-3.9(d)(1) require that *"a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."*

36. At the time of the August 21, 2013 inspection, Department staff observed that the small plastic Ziploc bag containing Warfarin bottles was open despite no one adding bottles to it at the time of inspection, which is in violation of regulations 6 NYCRR §373-3.9(d)(1).

37. Regulations at 6 NYCRR §373-3.9(e) require that *"at least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors."*

38. At the time of the August 21, 2013 inspection, Department staff determined that the inspection log for the week of August 17, 2013 was not completed. When questioned, the employee stated that an inspection was not conducted for that week, which is in violation of regulations at 6 NYCRR §373-3.9(e).

39. Regulations at 6 NYCRR §373-3.9(f) require that *“containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility property line.”*

40. At the time of the August 21, 2013 inspection, Department staff observed that the store is located in a retail space on a crowded main street and that there is no place to store ignitable waste on-site which would be 50 feet from the property line, which is a violation of regulations at 6 NYCRR §373-3.9(f).

41. Regulations at 6 NYCRR §373-3.9(f) require that *“the owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including, but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specifically designated locations. “No Smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.”*

42. At the time of the August 21, 2013 inspection, Department staff observed that there were no *“No Smoking”* signs posted in the area of the basement or of the pharmacy which is in violation of regulations at 6 NYCRR §373-3.9(f).

43. Regulations at 6 NYCRR §372.2(b)(2)(ii) provide that *“for each hazardous waste listed in Item 9 of the manifest, confirm with the designated facility what the ultimate disposal method will be for that waste. If the receiving TSD facility is not providing a hazardous waste management code in item 19 that reflects the ultimate disposal method for the hazardous waste, the generator must provide a State waste code in Item 13 of the manifest to designate the ultimate disposal method of the hazardous waste using one of following state codes:*

L = Landfill

B = Incineration, heat recovery, burning

T = Chemical, physical, or biological treatment

R = Material recovery of more than 75 percent of the total material

If the receiving TSD facility uses hazardous waste report management method code for “storage, bulking, and/or transfer off-site - no treatment/recovery, fuel blending, or disposal at this site” in Item 19 of the manifest form, and the generator has failed to provide the ultimate disposal method in Item 13, the ultimate disposal method is deemed landfill (L).

44. At the time of the August 21, 2013 inspection, Department staff determined that none of the seven manifests on file had indicated letter codes in box 13 and all had management method codes of H141 in box 19, which is in violation of regulations at 6 NYCRR §372.2(b)(2)(ii).

45. Regulations at 6 NYCRR §372.2(c)(3) provide that *“a generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date of shipment must immediately contact the transporter and/or disposal facility to determine the status of the shipment. If within 45 days of the date of*

shipment the generator has not received a signed copy of the manifest, an exception report must be submitted to the Department and, in the case of interstate shipments, submitted to the state in which the shipment was to be received, and any states in which the shipment may have been delivered. In the case of states which do not have EPA approved hazardous waste programs, notification must be sent to EPA. The exception report must include:

(i) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(ii) a cover letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts."

46. At the time of the August 21, 2013 inspection, Department staff observed that the generator did not have the signed TSDF copy for the following manifests: 00526928PSC, 005533920FLE, and 005967159FLE, which is in violation of regulations at 6 NYCRR §372.2(c)(3).

47. Regulations at 6 NYCRR §372.2(c)(1)(ii) requires that *"a generator must keep a copy of each Annual Report (paragraph (2) of this subdivision) and Exception Report (paragraph (3)) for a period of at least three years from the due date of the report."*

48. At the time of the August 21, 2013 inspection, Department staff determined that a copy of the Annual Report was not on file at this store, which is in violation of regulations at 6 NYCRR §372.2(c)(1)(ii).

49. Regulations at 6 NYCRR §372.2(b)(2)(i) require that *"the generator must designate on the manifest one facility which is authorized to handle the waste described on the manifest. A generator may also designate on the manifest one alternate facility which is authorized to handle the waste in the event an emergency prevents delivery of the waste to the primary designated facility. The generator must confirm by written communication from the designated treatment, storage or disposal facility and alternate treatment, storage or disposal facility that it is authorized to handle the particular hazardous waste described on the manifest."*

50. At the time of the August 21, 2013 inspection, Department staff determined that this store had the wrong letters on file for two of the three Treatment, Storage and Disposal Facilities ("TSDFs"). Instead of having written communication for PSC's Pennsylvania facility, they had one for PSC's New York facility; instead of having written communication for Stericycle's Indiana facility, they had one for the Ohio facility; and, they did not have anything for Northland Environmental, all of which are in violation of regulations at 6 NYCRR §372.2(b)(2)(i).

51. Regulations at 6 NYCRR §372.2(b)(2)(iii) require that *"the generator must confirm by written communication from the designated transporter(s) that they are authorized to deliver the manifested waste to the designated treatment, storage or disposal facility."*

52. At the time of the August 21, 2013 inspection, Department staff determined that Respondent either did not have written communications, had the wrong state's permits, or had expired permits for the five transporters they use, in violation of regulations at 6 NYCRR §372.2(b)(2)(iii).

53. Regulations at 6 NYCRR §373-3.4(c)(4) requires that *“the contingency plan must list names, addresses, and phone numbers (office and home) of all persons to act as emergency coordinator (see subdivision (f) of this section), and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.”*

54. At the time of the August 21, 2013 inspection, Department staff determined that the home address for the emergency coordinator was not provided, which is in violation of regulations at 6 NYCRR §373-3.4(c)(4).

55. Regulations at 6 NYCRR §373-3.4(d)(2) require that *“a copy of the contingency plan and all revisions to the plan must be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.”*

56. At the time of the August 21, 2013 inspection, Department staff determined that Respondent could not provide proof that they submitted copies of the contingency plan to local emergency response agencies, which is in violation of regulations at 6 NYCRR §373-3.4(d)(2).

57. Regulations at 6 NYCRR §376.1(g)(1)(ii) require generators of waste that do not meet the treatment standard to *“send a one-time written notice with the initial shipment to each treatment or storage facility and place a copy in their files. The notice must include manifest numbers.”*

58. At the time of the August 21, 2013 inspection, Department staff determined that the Land Disposal Restrictions (“LDR”) forms for manifests 000478714PSC and 005527928FLE did not reference the manifest numbers, which is in violation of regulations at 6 NYCRR §376.1(g)(1)(ii).

59. Regulations at 6 NYCRR §376.1(g)(1)(viii) requires that *“generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this subdivision for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The three year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the commissioner. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under subdivisions 371.1(c) through 371.1(g) of this Title, or exempted from hazardous waste regulations, Parts 370 through 374 and 376, subsequent to the point of generation.”*

60. At the time of the August 21, 2013 inspection, Department staff determined that the facility was missing the LDR form for manifest 005196623FLE, which is in violation of regulations at 6 NYCRR §376.1(g)(1)(viii).

61. Regulations at 6 NYCRR §376.5(a)(1)(i) *“allows the generator to store waste in tanks, containers, or containment buildings on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with all storage requirements of Part 372, Subparts 373-1, 373-2, and 373-3 of this Title.”*

62. At the time of the August 21, 2013 inspection, Department staff determined Respondent violated regulations at 6 NYCRR §376.5(a)(1)(i) based upon paragraphs 35-42 of this Order which itemize Respondent's non-compliance with applicable container storage requirements, which is in violation of regulations at 6 NYCRR §376.5(a)(1)(i).

Violations at Store # 0441

63. Regulations at 6 NYCRR §372.2(a)(8)(ii) provide that *“a generator may accumulate hazardous waste on-site of generation for a period of 90 days or less under the provisions of subparagraphs 373-1.1(d)(1)(iii), (iv), (xix) and (xx) of this Title. The date upon which each period of accumulation begins must be clearly marked and visible for inspection on all containers, tanks, or storage areas.”*

64. At the time of the August 26, 2013 inspection, Department staff determined that the box holding the used pharmaceuticals and weighing approximately two pounds was not marked with the accumulation start date, which is in violation of regulations at 6 NYCRR §372.2(a)(8)(ii).

65. Regulations at 6 NYCRR §373-3.9(d)(3) provide that *“containers holding hazardous waste must be marked with the words "Hazardous Waste" and with other words identifying their contents.”*

66. At the time of the August 26, 2013 inspection, Department staff determined that the box holding the used pharmaceuticals and weighing approximately two pounds was not marked with the words *“Hazardous Waste”* and other words identifying the box's contents, which is in violation of regulation at 6 NYCRR §373-3.9(d)(3).

67. Regulations at 6 NYCRR §372.2(b)(2)(ii) requires that the generator, *“for each hazardous waste listed in Item 9 of the manifest, confirm with the designated facility what the ultimate disposal method will be for that waste. If the receiving TSD facility is not providing a hazardous waste management code in item 19 that reflects the ultimate disposal method for the hazardous waste, the generator must provide a State waste code in Item 13 of the manifest to designate the ultimate disposal method of the hazardous waste using one of following state codes:*

L = Landfill

B = Incineration, heat recovery, burning

T = Chemical, physical, or biological treatment

R = Material recovery of more than 75 percent of the total material”

68. At the time of the August 26, 2013 inspection, Department staff determined that for each hazardous waste listed in box 9 of manifest #005533936FLE (5/17/13), 006494965FLE (5/1/13), 005967590FLE (2/20/13), 005967171FLE (11/26/12), 005417679FLE (8/28/12), Respondent did confirm with the designated facility what the disposal method for that waste which the TSD would put in box 19. However, since the receiving TSD did not provide the ultimate disposal of the hazardous waste, Respondent was required to provide a waste code in box 13 of the manifest to designate the ultimate disposal method of the waste using one of following state codes: L, B, T, and R, which Respondent failed to do in violation of regulations at 6 NYCRR §372.2(b)(2)(ii).

69. Regulations at 6 NYCRR §372.2(c)(1) require that the generator “*must keep a copy of each complete manifest document as a record for at least three years from the date the waste was accepted by the initial transporter.*”

70. At the time of the August 26, 2013 inspection, Respondent could not produce the TSDF copy of the manifest for several shipments, which is in violation of regulations at 6 NYCRR §372.2(c)(1).

71. Regulations at 6 NYCRR §372.2(b)(2)(i) require that the generator must “*designate on the manifest one facility which is authorized to handle the waste described on the manifest. A generator may also designate on the manifest one alternate facility which is authorized to handle the waste in the event an emergency prevents delivery of the waste to the primary designated facility. The generator must confirm by written communication from the designated treatment, storage or disposal facility and alternate treatment, storage or disposal facility that it is authorized to handle the particular hazardous waste described on the manifest.*”

72. At the time of the August 26, 2013 inspection, Respondent could not produce any documentation showing that *Northland Environmental* and *Stericycle* are authorized to accept hazardous waste, which is in violation of regulations at 6 NYCRR §372.2(b)(2)(i).

73. Regulations at 6 NYCRR §372.2(b)(2)(iii) require that the generator must “*confirm by written communication from the designated transporter(s) that they are authorized to deliver the manifested waste to the designated treatment, storage or disposal facility.*”

74. At the time of the August 26, 2013 inspection, Respondent could not produce any documentation showing that *Stericycle* is authorized to transport hazardous waste, which is in violation of regulations at 6 NYCRR §372.2(b)(2)(iii).

75. Regulations at 6 NYCRR §373-3.2(g)(1), (2), and (3) require that “*facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility’s compliance with the requirements of this Subpart. In addition, the owner or operator must ensure that:*

- facility personnel take part in an annual review of the initial training required.”

76. At the time of the August 26, 2013 inspection, Department staff determined that Respondent’s employee Cheryl Sicker had not received any hazardous waste training in 2012 but had received such training in 2013 and 2011, which is in violation of regulations at 6 NYCRR §373-3.2(g)(1), (2), and (3).

77. Regulations at 6 NYCRR §373-3.3(g)(1) require that “*the owner or operator must attempt to make the following arrangements as appropriate for the type of waste handled at the owner or operator’s facility and the potential need for the services of these organizations:*

(iv) arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.”

78. At the time of the August 26, 2013 inspection, Department staff determined that Respondent has not made arrangements with the local hospitals or medical facilities to familiarize them with the hazardous waste managed at the facility and types of injuries or illnesses that could result from fires, explosions, or releases at the facility, which is in violation of regulations at 6 NYCRR §373-3.3(g)(1).

79. Regulations at 6 NYCRR §373-3.4(c)(4) provide that the contingency plan “*must list names, addresses, and phone numbers (office and home) of all persons to act as emergency coordinator (see subdivision (f) of this section), and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.*”

80. At the time of the August 26, 2013 inspection, Department staff determined that the contingency plan did not list the names, addresses and telephone number of all emergency coordinators, which is in violation of regulations at 6 NYCRR §373-3.4(c)(4).

81. Regulations at 6 NYCRR §373.3.4(e) require that “*the contingency plan must be reviewed, and immediately amended, if necessary, whenever:*

(1) applicable regulations are revised;

(2) the plan fails in an emergency;

(3) the facility changes - in its design, construction, operation, maintenance, or other circumstances - in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(4) the list of emergency coordinators changes; or

(5) the list of emergency equipment changes.”

82. At the time of the August 26, 2013 inspection, Department staff determined that the contingency plan listed the previous store manager as the emergency coordinator and did not list anyone else. Respondent had failed to change this by removing the previous store manager and adding the current store manager, which is in violation of regulations at 6 NYCRR §373.3.4(e).

83. Regulations at 6 NYCRR §373-3.2(f)(3) requires that a handler “*must be able to demonstrate the length of time that the universal waste has been accumulated by marking the date, maintaining and inventory, or any other method.*”

84. At the time of the August 26, 2013 inspection, Department staff determined that Respondent was storing approximately three pounds of batteries (alkaline and mercury) in the front of the store. Respondent could not produce any documentation showing how long these batteries had been stored. The box was not marked with an accumulation start date. Therefore, Respondent could not demonstrate how long they had been storing the waste batteries, which is in violation of regulations at 6 NYCRR §373-3.2(f)(3).

Violations at Store # 7326

85. Regulations at 6 NYCRR §372.2(a)(8)(ii) allow a generator to “*accumulate on-site of generation without being subject to the regulations applicable to hazardous waste treatment, storage and disposal facilities if the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.*”

86. At the time of the August 27, 2013 inspection, Department staff observed that the box containing waste in the pharmacy was not labeled with a start date, which is in violation of regulations at 6 NYCRR 372.2(a)(8)(ii).

87. Regulations at 6 NYCRR §373-3.9(d) require a generator to “ensure that containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.”

88. At the time of the August 27, 2013 inspection, Department staff observed that the Ziploc bag containing Warfarin bottles from the pharmacy was open despite no one adding or removing waste from it, which is in violation of regulations at 6 NYCRR §373-3.9(d).

89. Regulations at 6 NYCRR §373-3.9(d)(3) require a generator to “ensure that the containers holding hazardous waste must be marked with the words “Hazardous Waste” and with other words identifying their contents.”

90. At the time of the August 27, 2013 inspection, Department staff observed that the box of waste in the pharmacy was not labeled with the words “Hazardous Waste” or with other words to describe the contents, which is in violation of regulations at 6 NYCRR §373-3.9(d)(3).

91. Regulations at 6 NYCRR §373-3.9(f) requires that “the owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including, but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specifically designated locations. “No Smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.”

92. At the time of the August 27, 2013 inspection, Department staff observed that there were no “No Smoking” signs posted in the areas where ignitable wastes were stored, such as in the load dock area where the front end waste box is located, which is in violation of regulations at 6 NYCRR §373-3.9(f).

93. Regulations at 6 NYCRR §372.2(b)(2)(ii) requires the generator, “for each hazardous waste listed in Item 9 of the manifest, confirm with the designated facility what the ultimate disposal method will be for that waste. If the receiving TSD facility is not providing a hazardous waste management code in item 19 that reflects the ultimate disposal method for the hazardous waste, the generator must provide a State waste code in Item 13 of the manifest to designate the ultimate disposal method of the hazardous waste using one of following state codes:

L = Landfill

B = Incineration, heat recovery, burning

T = Chemical, physical, or biological treatment

R = Material recovery of more than 75 percent of the total material”

94. At the time of the August 27, 2013 inspection, Department staff determined that letter codes of B, L, R or T were not written in Box 13 of any of the five manifests despite the management method code in box 19 being H141, which is in violation of regulations at 6 NYCRR §372.2(b)(2)(ii).

95. Regulations at 6 NYCRR §372.2(c)(3) provide that *“a generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date of shipment must immediately contact the transporter and/or disposal facility to determine the status of the shipment. If within 45 days of the date of shipment the generator has not received a signed copy of the manifest, an exception report must be submitted to the Department and, in the case of interstate shipments, submitted to the state in which the shipment was to be received, and any states in which the shipment may have been delivered. In the case of states which do not have EPA approved hazardous waste programs, notification must be sent to EPA. The exception report must include:*

(i) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(ii) a cover letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.”

96. At the time of the August 27, 2013 inspection, Department staff observed that the generator did not have the signed TSDF copy of manifest 005967314FLE dated December 24, 2012 on file, which is in violation of regulations of 6 NYCRR §372.2(c)(3).

97. Regulations at 6 NYCRR §372.2(c)(1)(iii) require that the generator *“must keep records of any test results, waste analyses, or other determinations made in accordance with paragraph (a)(2) of this section for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage or disposal.”*

98. At the time of the August 27, 2013 inspection, information relative to waste determinations was not available for review at the facility therefore the inspector could not review and make a determination regarding the acceptability of waste determinations which is a violation of regulations at 6 NYCRR §372.2(c)(1).

99. Regulations at 6 NYCRR §372.2(b)(2)(i) require that *“the generator must designate on the manifest one facility which is authorized to handle the waste described on the manifest. A generator may also designate on the manifest one alternate facility which is authorized to handle the waste in the event an emergency prevents delivery of the waste to the primary designated facility. The generator must confirm by written communication from the designated treatment, storage or disposal facility and alternate treatment, storage or disposal facility that it is authorized to handle the particular hazardous waste described on the manifest.”*

100. At the time of the August 27, 2013 inspection, Department staff determined that no written communication for Stericycle's Indianapolis, Indiana facility (INR000110197) was on file, which is in violation of regulations at 6 NYCRR §372.2(b)(2)(i).

101. Regulations at 6 NYCRR §372.2(b)(2)(iii) require that the generator must *“confirm by written communication from the designated transporter(s) that they are authorized to deliver the manifested waste to the designated treatment, storage or disposal facility.”*

102. At the time of the August 27, 2013 inspection, Department staff determined that no written communications for Stericycle (MNS000110924) or Freehold Cartage (NJD054126164) were on file at the facility, which is in violation of regulations at 6 NYCRR §372.2(b)(2)(iii).

103. Regulations at 6 NYCRR §373-3.4(c)(3) require that the contingency plan “*must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to section 373-3.3(g) of this Subpart.*”

104. At the time of the August 27, 2013 inspection, Department staff determined that a written description or documentation of the arrangements with the local emergency responders was not available for review, which is in violation of regulations at 6 NYCRR §373-3.4(c)(3).

105. Regulations at 6 NYCRR §373-3.4 (c)(5) requires that the contingency plan for the facility must “*include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up-to-date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.*”

106. At the time of the August 27, 2013 inspection, Department staff determined that Respondent’s contingency plan did not contain information about fire alarms nor did they appear on the building drawing, nor did the plan contain a complete list of equipment and its capabilities, all of which are in violation of regulations at 6 NYCRR §373-3.4 (c)(5).

107. Regulations at 6 NYCRR §373-3.4(d)(2) requires that “*a copy of the contingency plan and all revisions to the plan must be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.*”

108. At the time of the August 27, 2013 inspection, Respondent’s store manager could not produce documentation that the contingency plan had been submitted to local emergency responders, which is in violation of regulations at 6 NYCRR §373-3.4(d)(2).

109. Regulations at 6 NYCRR §376.1(g)(1)(ii) require generators of waste that do not meet the treatment standard to “*send a one-time written notice with the initial shipment to each treatment or storage facility and place a copy in their files. The notice must include the EPA Hazardous Waste number.*”

110. At the time of the August 27, 2013 inspection, Department staff determined that a properly completed LDR form, including the appropriate EPA waste codes, was not completed for any of the five waste shipments since 2012, which is in violation of regulations 6 NYCRR §376.1(g)(1)(ii).

111. Regulations at 6 NYCRR §376.1(g)(1)(ii) require generators of waste that do not meet the treatment standard to “*send a one-time written notice with the initial shipment to each treatment or storage facility and place a copy in their files. The notice must include applicable wastewater/non-wastewater category and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide).*”

112. At the time of the August 27, 2013 inspection, Department staff determined that properly completed LDR forms indicating the appropriate waste water or non-waste water designation, were not on file for any of the five waste shipments, which is in violation of regulations at 6 NYCRR §376.1(g)(1)(ii).

113. Regulations at 6 NYCRR §376.1(g)(1)(vi) require the generator to “*maintain the following information on-site in the generator’s files:*”

- all waste analysis data if the determination is based on testing the waste or an extract of the waste using the testing method 1311 from SW-846.”

114. At the time of the August 27, 2013 inspection, Department staff determined that no waste profiles were on file at the store which is in violation of regulations at 6 NYCRR §376.1(g)(1)(vi).

115. Regulations at 6 NYCRR §376.1(g)(1)(viii) require that “*generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this subdivision for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The three year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the commissioner. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under subdivisions 371.1(c) through 371.1(g) of this Title, or exempted from hazardous waste regulations, Parts 370 through 374 and 376, subsequent to the point of generation.”*

116. At the time of the August 27, 2013 inspection, Department staff determined that the facility was missing the LDR form for manifests 005967314FLE and 005417786FLE which is in violation regulations at 6 NYCRR §376.1(g)(1)(viii).

117. Regulations at 6 NYCRR §376.5(a)(1)(i) “*allows the generator to store waste in tanks, containers, or containment buildings on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with all storage requirements of Part 372, Subparts 373-1, 373-2, and 373-3 of this Title.”*

118. At the time of the August 27, 2013 inspection, Department staff determined that Respondent violated regulations at 6 NYCRR §376.5(a)(1)(i) based upon paragraphs 85-92 of this Order which itemize Respondent’s non-compliance with applicable container storage requirements which is in violation of regulations at 6 NYCRR §376.5(a)(1)(i).

Violations at Store # 5019

119. Regulations at 6 NYCRR §372.2(a)(8)(i)(a)(2) allows a generator to accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status provided the generator “*marks his containers with the words “Hazardous Waste” and with other words that identify the contents of the containers.”*

120. At the time of the September 12, 2013 inspection, Department staff determined that there was one tray of pharmaceutical waste including one Warfarin pill (P001). This tray was not marked with the words “*Hazardous Waste*” and other words identifying its contents which is in violation of regulations at 6 NYCRR §372.2(a)(8)(i)(a)(2).

121. Regulations at 6 NYCRR §372.2(a)(8)(ii) allow a generator to accumulate on-site of generation without being subject to the regulations applicable to hazardous waste treatment, storage and disposal facilities *“if the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.”*

122. At the time of the September 12, 2013 inspection, Department staff observed that the 30-gallon containers in the back room holding approximately 15 gallons of photographic solution waste were not marked with an accumulation start date, which is in violation of regulations at 6 NYCRR 372.2(a)(8)(ii).

123. Regulations at 6 NYCRR §373-3.9(d) require a generator to *“ensure that the containers holding hazardous waste must be marked with the words "Hazardous Waste" and with other words identifying their contents.”*

124. At the time of the September 12, 2013 inspection, Department staff observed that the 30-gallon containers in the back room holding approximately 15 gallons of photographic solution waste was open despite no waste being added or removed from it and there was an open funnel in one of the bung holes, which is in violation of regulations at 6 NYCRR §373-3.9(d)(3).

125. Regulations at 6 NYCRR §373-3.9(f) require generators to comply with the following: *“Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility property line.”*

126. At the time of the September 12, 2013 inspection, Department staff observed two boxes of unsalable products in the back room. In these boxes there were containers containing acetone or alcohol. These products were hazardous waste because they had a flash point below 140 F. Since Respondent was storing ignitable hazardous waste, they are required to store this waste at least 50-feet from the store’s property line. The waste appeared to be stored approximately 30 feet from the property line which is a violation of regulations at 6 NYCRR §373-3.9(f).

127. Regulations at 6 NYCRR §373-3.9(f) requires that *“the owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including, but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specifically designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.”*

128. At the time of the September 12, 2013 inspection, Department staff observed two boxes of unsalable products which contained ignitable hazardous waste in the back room. Respondent had not posted any *“No Smoking”* signs, which is in violation of regulations at 6 NYCRR §373-3.9(f).

129. Regulations at 6 NYCRR §373-3.2(g)(1), (2), and (3) requires that *“facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility’s compliance with the requirements of this Subpart. In addition, the owner or operator must ensure that:*

- facility personnel take part in an annual review of the initial training required.”

130. At the time of the September 12, 2013 inspection, Department staff determined that Respondent's employee Ms. Troast receives hazardous waste training every two years which is in violation of regulations at 6 NYCRR §373-3.2(g)(1), (2), and (3).

131. Regulations at 6 NYCRR §373-3.3(c) requires that *“all facilities must be equipped with the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:*

- portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment.”

132. At the time of the September 12, 2013 inspection at the Department's request, Respondent's employee Ms. Troast could not locate spill control equipment which is in violation of regulations at 6 NYCRR §373-3.3(c).

133. Regulations at 6 NYCRR §373-3.4(c)(4) provides that *“the plan must list names, addresses, and phone numbers (office and home) of all persons to act as emergency coordinator (see subdivision (f) of this section), and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.”*

134. At the time of the September 12, 2013 inspection, Department staff determined that the contingency plan listed the store manager as an emergency coordinator along with the store telephone number however it did not list his home address or home telephone number. Furthermore, no emergency coordinator and requisite contact information was listed for an alternative emergency coordinator in the absence of the store manager, which are in violation of regulations at 6 NYCRR §373-3.4(c)(4).

Civil Penalties

135. ECL Section 71-2705(1) provides for a maximum civil penalty of \$37,500 for the first day of a violation and each day thereafter of a regulation promulgated under Title 13 of ECL Article 27.

Waiver of Hearing

136. The Respondent hereby consents to the issuance and entry of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. Civil Penalty

With respect to the aforesaid violations, a civil penalty in the amount of TWENTY SEVEN THOUSAND NINE HUNDRED FORTY FIVE DOLLARS (\$27,945) is hereby assessed against the Respondent of which TWENTY FIVE THOUSAND, ONE HUNDRED AND FIFTY ONE DOLLARS (\$25,151) 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 of TWO THOUSAND SEVEN HUNDRED AND NINETY FOUR DOLLARS (\$2,794) 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. Indemnification

Respondent shall indemnify and hold harmless New York State, DEC, and any of their representatives, employees or contractors for all claims, actions, damages, and costs of any name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions of this Order by Respondent, their employees, contractors, servants, agents, successors or assigns.

III. Other Remedies

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting the following: (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that DEC may have against anyone other than Respondent; (2) DEC's right to enforce, administratively or otherwise, the terms, provisions and conditions of this Order against Respondent, its employees, servants, agents, successors and assigns in the event that Respondent shall be in breach of the provisions hereof, and to subject Respondent to penalties for such violations, or for other violations of the ECL; and (3) the Respondent's right to challenge any such action by the Department, whether by administrative hearing or otherwise, to the extent otherwise permitted by law or this Order on Consent.

IV. Entire Agreement; Modification

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

V. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

VI. Binding Effect

The provisions of this Order shall be deemed to bind Respondent, its officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for it.

VII. Reports

All reports and submissions herein required shall be made to the Region 4 Headquarters, New York State Department of Environmental Conservation, 1130 North Westcott Road Schenectady, New York, 12306, Att: Regional Hazardous Waste Engineer.

VIII. Inspections

For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question during reasonable hours, in order to inspect and/or require such tests as may be deemed necessary to determine the status of the Respondent's compliance with this Order.

IX. Summary Abatement

The terms of this Order shall not be construed to prohibit the Commissioner of his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

X. Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance which is incorporated into this Order.

XI. Termination of Order on Consent

This Order on Consent, including the Schedule of Compliance requirements, shall terminate one year after the effective date of this Order on Consent.

Dated: Jan 8, 2015
Rotterdam, NY

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:


Keith Goertz
Regional Director
Region 4

Schedule of Compliance

Store #5035

1. Within 75 days of the effective date of this Order, Respondent shall submit to the Department, a request for variance from regulations at 6 NYCRR §373-3.9(f) for the violation cited in paragraph No. 8 of the Order. This request shall be specific to each facility requesting the variance. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. If the submittal is accepted, Respondent shall implement any necessary actions in accordance with their respective schedules and terms, as approved. If the submittal is not accepted, the Department will either request modifications or additions to the variance request and provide a new deadline for a revised submittal, or the Department will notify Respondent that a variance will not be granted and reiterate that Respondent is responsible for compliance with regulations at 6 NYCRR §373-3.9(f).
2. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, the manifest with manifest document number 006493425PSC showing that the generator's EPA Identification Number is NYR000196089.

Store # 5034

3. Within 75 days of the effective date of this Order, Respondent shall submit to the Department, a request for variance from regulations at 6 NYCRR §373-3.9(f) for the violation cited in paragraph No. 40 of the Order. This request shall be specific to each facility requesting the variance. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. If the submittal is accepted, Respondent shall implement any necessary actions in accordance with their respective schedules and terms, as approved. If the submittal is not accepted, the Department will either request modifications or additions to the variance request and provide a new deadline for a revised submittal, or the Department will notify Respondent that a variance will not be granted and reiterate that Respondent is responsible for compliance with regulations at 6 NYCRR §373-3.9(f).

Store # 0441

4. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, documentation showing how CVS will ensure that a code is placed in Box 13 of every manifest designating the ultimate disposal code of each waste.
5. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, documentation either showing that Cheryl Sicker did receive hazardous waste training during 2012 or in the alternative, acknowledging that Ms. Sicker did not receive hazardous waste training during 2012. If she did not already, Respondent shall arrange for her to receive this training and provide documentation showing that she has received this training within 30 days of the effective date of this Order.

Store # 7326

6. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, three examples of waste determinations made by Respondent's third party vendor for common products that have been shipped as waste in the past year. This submittal shall further propose a method whereby Respondent can make waste determination information available to inspectors on the day of inspection.
7. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, the Land Disposal Restriction forms for manifested shipments made in 2012.

Store # 5019

8. Within 75 days of the effective date of this Order, Respondent shall submit to the Department, a request for variance from regulations at 6 NYCRR §373-3.9(f) for the violation cited in paragraph No. 126 of the Order. This request shall be specific to each facility requesting the variance. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. If the submittal is accepted, Respondent shall implement any necessary actions in accordance with their respective schedules and terms, as approved. If the submittal is not accepted, the Department will either request modifications or additions to the variance request and provide a new deadline for a revised submittal, or the Department will notify Respondent that a variance will not be granted and reiterate that Respondent is responsible for compliance with regulations at 6 NYCRR §373-3.9(f).