

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED
7013 1090 0002 3365 3755

May 21, 2015

Richard Frankel, Esq.
Iseman, Cunningham, Riester & Hyde, LLP
9 Thurlow Terrace
Albany, NY 13782

Re: Order of Consent
Seton Health System, Inc.
R4-2014-0917-152

Dear Mr. Frankel:

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

This will also acknowledge receipt of \$17,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: H. Brezner
J. Quinn



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 27,
Title 9 of the Environmental Conservation Law;

-by-

ORDER ON CONSENT
File No. R4-2014-0917-152

Seton Health System, Inc.
315 S. Manning Blvd
Albany, NY 12208

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 9 of the Environmental Conservation Law (the "ECL").
2. On July 18, 2014, Department staff performed an inspection ("inspection") of St. Mary's Hospital located at 1300 Massachusetts Avenue, Troy, New York ("facility"). The facility has EPA Identification Number NYD020656617.

First Violation

3. Regulations at 6 NYCRR §372.2(a)(2) requires a person who generates a solid waste, to determine if that waste is a hazardous waste.
4. At the time of the inspection, Department staff observed that Respondent had disposed of non-empty aerosol cans with their regular non-hazardous commercial/industrial waste and had placed broken bulbs in the garbage can with other non-hazardous waste. Respondent's failure to determine if these wastes constituted hazardous wastes is in violation of regulations at 6 NYCRR §372.2(a)(2).

Second and Third Violations

5. Regulations at 6 NYCRR §372.2(a)(8)(i)(a) "allow 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:

- keeps all containers closed except if they are in use.

- the generator marks his containers with the words "Hazardous Waste" and with other words that identify the contents of the containers.

6. At the time of the inspection, Department staff observed that many of the containers in various accumulation areas were open despite no waste being added or removed from them which is in violation of regulations at 6 NYCRR §372.2(a)(8)(i)(a).

7. At the time of the inspections, all the accumulation containers holding chemotherapy waste were not marked with the words "*Hazardous Waste*." All of the accumulation containers holding used pharmaceuticals were not marked with other words indicating what was in the containers. Furthermore, 10 of the accumulation containers in the lab holding solvents were not marked with the words "*Hazardous Waste*" and other words identifying its contents, both of which are in violation of regulations at 6 NYCRR §372.2(a)(8)(i)(a).

Fourth Violation

8. Regulations at 6 NYCRR §372.2(a)(8)(ii) provide that "*except as provided in subparagraphs (iii), (iv), and (v) of this paragraph, 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.*"

9. At the time of the inspection, 15 of the 16 containers in the storage area were not marked with accumulation start dates which is in violation of regulations at 6 NYCRR §372.2(a)(8)(ii).

Fifth Violation

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

11. At the time of the inspection, all 16 containers in the storage area were either not marked with the words "*Hazardous Waste*" or other words identifying the container's contents, which is in violation of regulations at 6 NYCRR §373-3.9(d)(3).

Sixth Violation

12. Regulations at 6 NYCRR §372.2(b)(2) 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.*"

13. At the time of the inspection, St. Mary's could not produce any documentation to establish that Clean Harbors and Safety Kleen are authorized to transport hazardous waste, which is in violation of regulations at 6 NYCRR §372.2(b)(2).

Seventh Violation

14. 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.

15. At the time of the inspection, the inspector was verbally advised that no one at St. Mary's has received an annual review of their initial training which is in violation of regulations at 6 NYCRR §373-3.2(g)(1), (2), and (3).

Eighth Violation

16. 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."*

17. At the time of the inspection, Department staff observed that the smaller containers holding chemotherapy waste were on a rack that was placed against a wall. There were 11 containers jammed together with no way to get to some of the containers without moving some of the other containers first, thus resulting in insufficient aisle space which is in violation of regulations at 6 NYCRR §373-3.3(f).

Ninth Violation

18. Regulations at 6 NYCRR §373-3.4(c)(1) requires the following content in a Contingency Plan:

"The contingency plan must describe the actions facility personnel must take to comply with subdivisions (b) and (g) of this section in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility."

19. At the time of the inspection, Department staff determined that the contingency plan was missing a description of the action facility personnel were to take in response to a fire, explosion or spill, which is in violation of regulations at 6 NYCRR §373-3.4(c)(1).

Tenth Violation

20. Regulations at 6 NYCRR §373-3.4(c)(3) requires the following content in a Contingency Plan:

"The 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."

21. At the time of the inspection, Department staff determined that the Contingency Plan was missing a description of the action facility which personnel were to take in response to a fire, which is in violation of regulations at 6 NYCRR §373-3.4(c)(3).

Eleventh Violation

22. Regulations at 6 NYCRR §373-3.4(c)(4) requires the following content in a Contingency Plan:

“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.”

23. At the time of the inspection, Department staff determined that the Contingency Plan was missing the names, home addresses, home and office telephone numbers of the emergency coordinators, which is in violation of regulations at 6 NYCRR §373-3.4(c)(4).

Twelfth and Thirteenth Violations

24. Regulations at 6 NYCRR §373-3.4(c)(5) requires the following content in a Contingency Plan:

“The plan 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.”

25. At the time of the inspection, Department staff determined that the contingency plan was missing a list of emergency and decontamination equipment located at the facility and that the contingency plan was missing the location and capacity of the emergency and decontamination equipment located at the facility, both of which are in violation of regulations at 6 NYCRR §373-3.4(c)(5).

Fourteenth Violation

26. Regulations at 6 NYCRR §373-3.4(d)(2) require that each owner or operator must submit copies of the Contingency Plan *“to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.”*

27. At the time of the inspection, Department staff determined that St. Mary’s had failed to provide copies of their contingency plan to all local and state emergency responders, which is in violation of regulations at 6 NYCRR §373-3.4(d)(2).

Fifteenth Violation

28. Regulations at 6 NYCRR § 374-3.2(d)(4)(i) require that *“A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.”*

29. At the time of the inspection, Department staff determined that there were three boxes holding used bulbs that were not closed despite no waste being added or removed from them, which is in violation of regulations at 6 NYCRR § 374-3.2(d)(4)(i).

Sixteenth Violation

30. Regulations at 6 NYCRR § 374-3.2(d)(4)(ii) require that *“A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.”*

31. At the time of the inspection, Department staff observed that there were glass shards on the floor in the east bulb room on the fourth floor which was evidence that there had been a spill of bulbs that had not completely been cleaned up, which is in violation of regulations at 6 NYCRR § 374-3.2(d)(4)(ii).

Seventeenth Violation

32. Regulations at 6 NYCRR §374-3.2(e)(1) provides that *“A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:*

(1) 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)."

33. At the time of the inspection, Department staff determined that none of the 50 batteries in the east basement, the six loose batteries in the storage room, and the box of lithium batteries in the storage room, were marked with the appropriate words, which is in violation of regulations at 6 NYCRR §374-3.2(e)(1).

Eighteenth Violation

34. Regulations at 6 NYCRR §374-3.2(f)(1) requires 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.”*

35. At the time of the inspection, Department staff observed that there was one container holding used batteries that was marked with an accumulation start date of 10/10/10. These batteries had been stored for approximately 1,365 days and St. Mary's was unable to show that this accumulation was necessary to facilitate proper recovery, treatment or disposal, which is in violation of regulations at 6 NYCRR §374-3.2(f)(1).

Nineteenth Violation

36. Regulations at 6 NYCRR §374-3.2(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 an inventory, or other method.”*

37. At the time of the inspections, Department staff observed that most of the batteries in the storage room (1 5-gallon pail, six loose batteries and one box of lithium batteries) as well as the 50 batteries in the east basement were not marked with an accumulation start date. St. Mary’s had no other way of showing how long these batteries had been stored. Failure to demonstrate how long the batteries had been stored is in violation of regulations at 6 NYCRR §374-3.2(f)(3).

Twentieth and Twenty First Violations

38. Regulations at 6 NYCRR §374-3.2(h)(1) requires that *“A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.”*

39. Regulations at 6 NYCRR §374-3.2(h)(2) requires that *“A small quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of Parts 370 through Subpart 374-1 and Part 376 of this Title. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with Part 372 of this Title.”*

40. At the time of the inspection, Department staff observed glass shards on the floor in the east bulb room on the fourth floor which was evidence that there had been a spill of bulbs which had not been cleaned up, which is in violation of regulations at 6 NYCRR §374-3.2(h)(1) and 6 NYCRR §374-3.2(h)(2).

Civil Penalties

41. 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 9 of ECL Article 27.

Waiver of Hearing

42. 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 of the aforesaid alleged violations, a civil penalty in the amount of TWENTY THOUSAND DOLLARS (\$20,000) of which SEVENTEEN THOUSAND DOLLARS (\$17,000) 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 THREE THOUSAND DOLLARS (\$3,000) 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. 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 Respondents 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.

XII. Third Party

This Order shall not create any presumption of law or fact that shall inure to the benefit of any person other than the State, Department or Respondent.

XIII. Reservations

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affect Respondent's rights to assert all available defenses to any claims, actions, proceedings, suits, causes of actions, audits, demands made or commenced by the State or the Department except as to violations contained in this Order.

Dated: May 20, 2015
Rotterdam, NY

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

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

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

Seton Health System, Inc.

BY: Scott St. George
Seton

TITLE: VP OPERATIONS, ANTC (AFK NY)

DATE: 5/19/15

STATE OF NEW YORK)
COUNTY OF Rensselaer)ss.:

On the 19th day of MAY in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Scott St. George, 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.

Linda B. Manoni

Notary Public
Qualified in the County of:
My Commission Expires:

LINDA B. MANONI
Notary Public, State of New York
No. 01MA6014617
Qualified in Saratoga County
Commission Expires October 19, 2018

Schedule of Compliance

1. Within 10 days of the effective date of the Order, St. Mary's Hospital shall submit to the Department, a notice under Part 371.1(c)(7) for the lead shields, and lead aprons sent off-site for recycling.
2. Within 10 days of the effective date of the Order, St. Mary's Hospital must submit:
 - (a) Pictures showing that all containers in the storage area have been labeled with the words "Hazardous Waste" and other words identifying their contents; and
 - (b) A policy establishing how St. Mary's Hospital will ensure that all hazardous waste containers are labeled correctly in the future.
3. Within 10 days of the effective date of the Order, St. Mary's Hospital must submit to the Department, documentation establishing that Clean Harbors – El Dorado, Clean Harbors – Reidsville, Safety Kleen – Smithfield and ENPRO of Vermont are authorized to transport hazardous waste.
4. Within 10 days of the effective date of this Order, St. Mary's Hospital must submit to the Department, documentation establishing that Clean Harbors and Safety Kleen are authorized to transport hazardous waste.
5.
 - a) Within 10 days of the effective date of this Order, St. Mary's Hospital must submit to the Department, documentation establishing that hospital personnel involved with hazardous waste management, have been trained on hazardous waste management, universal waste management, and the following items:
 - a. Procedures for using, inspecting, repairing and replacing facility emergency and monitoring equipment;
 - b. Communications or alarm systems;
 - c. Response to fires and explosions;
 - d. Response to groundwater contamination incident.
 - b) Within 10 days of the effective date of this Order, St. Mary's must also submit to the Department, a policy to establish that hospital personnel involved in hazardous waste management will receive annual training on these topics.
6. Within 30 days of the effective date of this Order, St. Mary's. Hospital must submit to the Department, a contingency plan which addresses the following:
 - a. A description of the action facility which personnel intend to take in response to a fire, explosion or spill.
 - b. A description of the arrangements agreed to by the local and state emergency responders.
 - c. The names, home addresses, home and office telephone numbers of the emergency coordinators;
 - d. A list of emergency and decontamination equipment located at the facility;
 - e. The location and capacity of the emergency and decontamination equipment located at the facility.

7. Within 30 days of the effective date of this Order, St. Mary's Hospital shall submit to the Department, documentation to establish that it has submitted copies of their contingency plan to all state and local emergency response organizations.