

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. R4-2009-0918-152

Memorial Hospital, Albany, N.Y.
600 Northern Blvd,
Albany, NY 12204

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, Titles 13 of the Environmental Conservation Law (the "ECL").
2. Respondent, Memorial Hospital, Albany, N.Y., owns and operates a hospital at 600 Northern Blvd, Albany, New York that is a generator of hazardous waste ("facility").
3. On August 14, 2009, Department staff inspected the facility and observed the following violations of 6 NYCRR Part 371.

Violations

4. Regulation at 6NYCRR 371.1(c)(7) requires that the generator who raises a claim that certain material is not a solid or hazardous waste, or is exempt or conditionally exempt from regulation, based on the intent to reclaim, recycle or reuse, must notify the Department, in writing, before utilizing the exemption or exclusion. This notification shall give (1) the names and locations of the generating and receiving facility, if different; (2) identify all exemptions or exclusions that the party is claiming; and (3) describe the activity or activities which are believe to qualify for such exemptions or exclusions.
5. Respondent violated 6 NYCRR 371.1(c)(7) by failing to file an updated notice with the Department under 6NYCRR 371.1(c)(7) identifying its current receiving facility.
6. Regulation at 6 NYCRR 372.2(a)(2) requires a person who generates a solid waste, to determine if that waste is a hazardous waste.

7. Respondent violated 6 NYCRR 372.2(a)(2) by storing seven one-gallon containers of DAB waste in its trash room without any identification of their contents.

8. Regulation at 6 NYCRR 372.2(a)(8)(i)(a) 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 provided the containers are closed, they are marked with the words "Hazardous Waste".

9. Respondent violated 6 NYCRR 372.2(a)(8)(i)(a) by possessing a 5-gallon container holding paraffin waste in the morgue that wasn't marked with the words, "Hazardous Waste", and other words identifying its contents.

10. Regulation at 6 NYCRR 372.2(a)(8)(ii) allows 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.

11. Respondent violated 6 NYCRR 372.2(a)(8)(ii) by possessing the following containers in the trash room that weren't marked with an accumulation date:

- the 10 5-gallon and the 1 30-gallon containers holding the chemotherapy waste;
- the 5-gallon container holding the mercury spill debris; ~~and~~
- the 2 boxes and the 2 5-gallon containers holding the waste mercury devices; and
- the 6 5-gallon containers holding the paraffin waste.

12. Regulation at 6 NYCRR 373-3.9(d)(3) requires a generator to ensure that containers holding hazardous waste are marked with the words "Hazardous Waste" and with other words identifying their contents.

13. Respondent violated 6 NYCRR 373-3.9(d)(3) by possessing the following containers without markings with the words "Hazardous Waste":

- ten 5-gallon containers and a 30-gallon container holding the chemotherapy waste;
- a 5-gallon container holding the mercury spill debris; and
- two boxes and two 5-gallon containers holding the waste mercury devices.

14. Regulation at 6 NYCRR 373-3.9(d) requires a generator to ensure that container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

15. Respondent violated 6 NYCRR 373-3.9(d) by possessing six 5-gallon containers holding paraffin waste were open.

16. Regulation at 6 NYCRR 373-3.9(d)(2) requires a generator to ensure that a container holding hazardous waste are not opened, handled, or stored in a manner which may rupture the container or cause it to leak.
17. Respondent violated 6 NYCRR 373-3.9(d)(2) by stacking ten 5-gallon containers holding chemotherapy in three high stacks and some had tipped over and were lying on their side or upside down.
18. Regulation at 6 NYCRR 372.2(b)(2)(i) requires that 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.
19. Respondent's violated 6 NYCRR 372.2(b)(2)(i) by not being able to produce documentation showing the designated treatment, storage or disposal facility was authorized to accept hazardous waste was authorized to accept hazardous waste.
20. Regulation at 6 NYCRR 372.2(b)(2)(iii) requires that the generator confirm by written communication that the designated transporter is authorized to deliver the waste to the facility on the manifest.
21. Respondent violated 6 NYCRR 372.2(b)(2)(iii) by not being able to produce documentation that designated transporter of its hazardous waste was authorized to haul hazardous waste.
22. Regulation at 6 NYCRR 373-3.3(f) requires 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.
23. Respondent violated 6 NYCRR 373-3.3(f) failing to store the hazardous wastes in the trash room that allowed unobstructed movement of personnel.
24. Regulation 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 any other method.
25. Respondent violated 6 NYCRR 374-3.2(f)(3) by possessing containers holding used lamps and batteries in the stock room that weren't marked with the accumulation start date. This violation was corrected during the inspection.

Civil Penalties

26. 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

27. 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

Respondent is hereby assessed a civil penalty in the amount of SEVENTEEN THOUSAND DOLLARS (\$17,000) for the violations stated herein. FOUR THOUSAND TWO HUNDRED FIFTY DOLLARS (\$4,250) of civil penalty is suspended conditioned on Respondent's compliance with the terms, conditions and provisions of this Order on Consent. Payment of the suspended penalty shall be due within fifteen (15) calendar days of the receipt by the Respondent of a notice of violation from the Department which sets out the violations of the Order. Respondent shall pay TWELVE THOUSAND SEVEN HUNDRED FIFTY (\$12,750) of the civil penalty by check with the return of the signed and notarized Order. This provision shall not limit the Department's right to seek other remedies provided by law and the applicable regulations for violations of this Order on Consent.

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, his 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) DEC's right 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; or (5) 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 is the date that by the Commissioner of Environmental Conservation, or her designee, signs it; and this Order shall expire when Respondent has fully complied with the requirements of this Order.

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.

Date: October , 2009

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 its right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

Memorial Hospital, Albany, N.Y.

Title: _____

DATE: _____

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

On the ____ day of _____ in the year 2009, before me, the undersigned,
personally appeared _____
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

(Full mailing address)

and that he/she/they is (are) the _____
(President or other officer or director or attorney in fact duly appointed)

of the _____
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Notary Public, State of New York

Schedule of Compliance

1. Within 30 days of the effective date of this Order, Respondent shall file a new notice with the Department under 6 NYCRR Part 371.1(c)(7) for recycling used electronics.
2. Within 30 days of the effective date of this Order, Respondent shall determine if the DAB waste referenced in Paragraph 7 of the Order is a hazardous waste and submit documents supporting this determination.
3. Within 30 days of the effective date of this Order, Respondent shall: (1) close the 5-gallon paraffin container and label this container with the words "Hazardous Waste" and other words identifying its contents; (2) develop a procedure to ensure that all hazardous waste containers are labeled properly and closed unless material is being added or removed from a container; (3) train Albany Memorial staff on this procedure; and (4) submit documentation to the Department showing the facility is in compliance with this requirement.
4. 30 days of the effective date of this Order, Respondent shall: (1) mark all hazardous waste containers at Albany Memorial Hospital that are in storage with an accumulation start date and (2) submit documentation to the Department showing the facility is in compliance for this requirement.
5. Within 30 days of the effective date of this Order, Respondent shall: (1) mark all hazardous waste containers at Albany Memorial Hospital that are in storage with the words "Hazardous Waste" and (2) submit documentation to the Department showing the facility is in compliance with this requirement.
6. Within 30 days of the effective date of this Order, Respondent shall: (1) close all hazardous waste containers at Albany Memorial Hospital that are in storage unless waste is being added or removed from a container and (2) submit documentation to the Department showing the facility is in compliance with this requirement
7. Within 30 days of the effective date of this Order, Respondent shall (1) ensure that all hazardous waste container at Albany Memorial Hospital that are in storage are managed, so that the containers will not tip over or being in danger of leaking or breaking and (2) submit documentation to the Department showing the facility is in compliance with this requirement.
8. Within 30 days of the effective date of this Order, Respondent shall submit to the Department documentation showing that Clean Harbor - El Dorado was authorized to accept hazardous waste.

9. Within 30 days of the effective date of this Order, Respondent shall submit to the Department documentation showing that Clean Harbor was authorized to haul hazardous waste.
10. Within 30 days of the effective date of this Order, Respondent shall rearrange the placement of the containers in the fenced area in the Trash Room, so that there is adequate 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 and submit documentation to the Department showing the Trash Room is in compliance with 6 NYCRR 373-3.3(f).