

**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 0761

January 21, 2015

A. Scott Bard, Assistant Director  
Capital Operations  
CDPC – Units Q & R  
75 New Scotland Avenue  
Albany, NY 12208

Re: Order on Consent  
R4-2014-0827-142

Dear Mr. Bard:

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

This will also acknowledge receipt of \$1,410 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

cc: H. Brezner

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

-by-

ORDER ON CONSENT  
File No. R4-2014-0827-142

NYS Office of Mental Health  
Hudson River Field Office  
10 Ross Circle, Suite 5N  
Poughkeepsie, NY 12601

Respondent  
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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 June 4, 2014, Department staff conducted an inspection ("inspection") of the Capital District Psychiatric Center, 75 New Scotland Ave, Albany, New York ("facility"). The facility has EPA Identification Number NYD980549935.

First Violation

3. 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 process generating the waste, without a permit or interim status provided the generator:
  - keeps all containers closed except if they are in use.
4. At the time of the inspection, Department staff determined that the 5-gallon pail in the dentist area was open despite no waste being added or removed from it, which is in violation of regulations at 6 NYCRR §372.2(a)(8)(i)(a).

Second Violation

5. 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.

6. At the time of the inspection, Department staff observed 34 5-gallon pails holding corrosives and 1 55-gallon drum holding aerosol cans were not marked with an accumulation start date. These containers were located in a roofed, but not totally enclosed, outside storage area with ground surface sloping towards the outside, thus presenting a potential for contaminant release to the environment in the event of container failure and contaminant release. This is a violation of regulations at 6 NYCRR §372.2(a)(8)(ii).

#### Third Violation

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

8. At the time of the inspection, Department staff observed that the 5-gallon pail holding waste developer was not marked with the words “*Hazardous Waste*” and with other words identifying their contents, which is in violation of regulations at 6 NYCRR §373-3.9 (d)(3).

#### Fourth Violation

9. Regulations at 6 NYCRR §373-3.9 (b) require a generator to ensure that if a container holding hazardous waste is not in good condition, or if it begins to leak, the generator has to transfer the hazardous waste from this container to a container that is in good condition.

10. At the time of the inspection, Department staff observed that two of the 34 5-gallon pails holding corrosives were in poor condition and appeared to be damaged and had material on the top and the sides of the containers. This is a violation of regulations at 6 NYCRR §373-3.9 (b).

#### Fifth Violation

11. 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”*

12. At the time of the inspection, Department staff observed that in box No. 13 for the first waste stream listed on manifest #005843758JJK (8/30/12), the Psychiatric Center failed to note a waste code (L, B, T or R) designating the ultimate disposal method which is required when the receiving facility does not provide the ultimate disposal for the hazardous waste received. Failure to do so is a violation of regulations at 6 NYCRR §372.2 (b)(2)(ii).

#### Sixth Violation

13. Regulations at 6 NYCRR §372-3.2(d)(4)(i) require that the handler must place universal waste lamps in a container that is closed, structurally sound, adequate to prevent breakage, compatible with the contents, and must lack evidence of leakage, spillage, or damage.

14. At the time of the inspection, Department staff observed that there was one box out of 30 boxes holding used lamps on the pallet that was damaged and no longer structurally sound. There were also two boxes out of four boxes holding used 4-foot lamps not on the pallet that were open despite no bulbs being added or removed. Additionally, there was one box holding compact bulbs that was open despite no bulbs being added or removed. These are violations of regulations at 6 NYCRR §372-3.2(d)(4)(i).

#### Seventh Violation

15. Regulations at 6 NYCRR §374-3.2(e)(5) require that each lamp or containers or package containing lamps are clearly labeled or marked with any of the following phrases: “*Universal Waste – Lamp(s)*,” or “*Waste Lamp(s)*,” or “*Used Lamp(s)*.”

16. At the time of the inspection, Department staff observed that two of the four boxes holding 4-foot bulbs not on the pallet were not labeled or marked with any of the following phrases: “*Universal Waste – Lamp(s)*,” or “*Waste Lamp(s)*,” or “*Used Lamp(s)*.” This is a violation of regulations at 6 NYCRR §372-3.2(e)(5).

#### Eighth Violation

17. Regulations at 6 NYCRR §374-3.2(f)(2) requires that the accumulation of universal waste for longer than one year is allowed, if the handler properly demonstrates that such accumulation is necessary to facilitate proper recovery, treatment or disposal.

18. At the time of the inspection, Department staff observed that there were four boxes out of 30 boxes holding used lamps on the pallet that had been stored for more than 1 year – 11/4/11, 5/10/12, 12/20/11 and 10/5/11. Since the Psychiatric Center could not demonstrate that storing these bulbs for more than one year was necessary to facilitate proper recovery, treatment or disposal, Respondent violated regulations at 6 NYCRR §374-3.2(f)(2).

#### Ninth Violation

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

20. At the time of the inspection, Department staff observed that three of the four boxes holding 4-foot bulbs not on the pallet were not marked with accumulation start dates. Since the Psychiatric Center could not demonstrate, by any means, how long they had been storing the bulbs in these boxes, Respondent violated regulations at Regulations at 6 NYCRR §374-3.2(f)(3).

#### Civil Penalties

21. 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

22. 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 TWO THOUSAND THREE HUNDRED FIFTY DOLLARS (\$2,350) is hereby assessed against the Respondent of which ONE THOUSAND FOUR HUNDRED TEN DOLLARS (\$1,410) shall be payable to the New York State Department of Environmental Conservation via SFS at the time this Order is signed, notarized and returned to the Department. The balance NINE HUNDRED FORTY DOLLARS (\$940) 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. 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.

### III. 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.

### IV. 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.

### X. Schedule of Compliance

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

Dated: *January 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.

NYS Office of Mental Health

BY: *C. Scott Bard*

TITLE: *Asst Director Capital Operations*

DATE: *1/14/15*

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

On the 14<sup>th</sup> day of January in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared C. Scott Bard, 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.

*[Signature]*  
Notary Public  
Qualified in the County of:  
My Commission Expires:

PAUL C. MARQUARDT, SR  
Notary Public, State of New York  
Qualified in Albany County  
My Commission Expires *3/10/16*

## Schedule of Compliance

1. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, (1) written documentation showing the 5-gallon pail in the dentist office area is closed; and (2) a standard operating procedure showing how the Capital District Psychiatric Center will ensure that all containers holding hazardous waste will be closed except when hazardous waste is added or removed from them.
2. Within 10 days of the effective date of this Order, Respondent shall submit written documentation to the Department, showing that the 34 five gallon-pails holding corrosives and the 55-gallon drum holding aerosol cans in the waste storage area, have been marked with accumulation start dates.
3. Within 10 days of the effective date of this Order, Respondent shall submit written documentation to the Department, showing that the 5-gallon pail holding waste developer in the waste storage area, has been marked with the words, "*Hazardous Waste.*"
4. Within 10 days of the effective date of this Order, Respondent shall submit written documentation to the Department, showing that two of the 34 five-gallon pails holding corrosives in the waste storage area and in poor condition have either been (1) shipped off-site for disposal; or (2) placed in an over-pack container.
5. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a standard operating procedure that describes how Capital District Psychiatric Center will ensure that all hazardous waste manifests are completed correctly including the placement of a State waste code (L, B, T or R) in Box 13 of the manifest to designate the ultimate disposal method of the hazardous waste management code in Box 19 of the manifest that reflects the ultimate disposal method for the hazardous waste.
6. Within 10 days of the effective date of this Order, Respondent shall submit written documentation to the Department (1) showing that all containers holding used lamps in the waste storage area are structurally sound and closed; and (2) a standard operating procedure showing how the Capital District Psychiatric Center will ensure that all containers holding used lamps will be closed except when used lamps are added or removed from them.
7. Within 10 days of the effective date of this Order, Respondent shall submit written documentation to the Department (1) showing that all containers holding used lamps in the waste storage area are labeled or marked with any one of the following phrases: "*Universal Waste Lamp(s),*" or "*Waste Lamp(s)*" or "*Used Lamp(s);*" and (2) a standard operating procedure showing how the Capital District Psychiatric Center will ensure that all containers holding used lamps are labeled or marked with one of these phrases.
8. Within 10 days of the effective date of this Order, Respondent shall submit written documentation to the Department (1) showing that the containers holding used lamps for more than one year have been removed from the site; and (2) a standard operating procedure showing how the Capital District Psychiatric Center will ensure that all containers holding used lamps will be stored for less than one year.

9. Within 10 days of the effective date of this Order, Respondent shall submit written documentation to the Department (1) showing that the containers holding used lamps have been marked with an accumulation start date; and (2) a standard operating procedure showing how the Capital District Psychiatric Center will ensure that all containers holding used lamps are marked with an accumulation start date.