

**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 0860

October 14, 2014

Peggy Moon  
PGS Millwork, Inc.  
32 Hickory Lane  
Hudson, New York 12534

Re: Order of Consent  
R4-2014-0812-135

Dear Ms. Moon:

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

This will also acknowledge receipt of \$2,500 the civil penalty pursuant to Paragraph I.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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 9 of the Environmental Conservation Law;

-by-

ORDER ON CONSENT  
File No. R4-2014-0812-135

PGS Millwork, Inc.  
32 Hickory Lane  
Hudson, NY 12534

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 9 of the Environmental Conservation Law (the "ECL").
2. On June 10, 2014, Department staff conducted an inspection ("inspection") of Petersen Geller Spurge, Inc., 32 Hickory Lane, Hudson, New York ("facility"). The facility has EPA Identification Number NYR000096891.

First Violation

3. Regulations at 6 NYCRR §372.2(a)(8)(iii) allow the generator who generates more than 100 kg but less than 1,000 kg of non-acute hazardous waste in a calendar month to accumulate less than 6,000 kg on-site provided the following requirements are met:

- The name and phone number of the emergency coordinator must be posted next to the telephone.

4. At the time of the June 10, 2014 inspection, Department staff observed that Respondent had failed to post the name and telephone number of their emergency coordinator next to a phone, which is in violation of regulations at 6 NYCRR 372.2(a)(8)(iii).

Second Violation

5. Regulations at 6 NYCRR §372.2(a)(8)(iii) allow the generator who generates more than 100 kg but less than 1,000 kg of non-acute hazardous waste in a calendar month, to accumulate less than 6,000 kg on site provided the following requirements are met:

-Location of fire extinguishers and spill control material and if present, fire alarm must be posted next to the telephone.

6. At the time of the June 10, 2014 inspection, Department staff observed that Respondent had failed to post the location of their spill control material next to the telephone, which is in violation of regulations at 6 NYCRR §372.2(a)(8)(i)(a).

#### Third Violation

7. 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.

8. At the time of the June 10, 2014 inspection, Department staff observed that the accumulation container holding paint, lacquer and thinner, next to Booth 1, 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).

#### Fourth Violation

9. Regulations at 6 NYCRR §372.2(b)(1) require a generator who transports or offers for transportation, hazardous waste to prepare a Manifest according to the Manifest instructions included in Appendix 30 of this Title.

10. At the time of the June 10, 2014 inspection, Department staff determined that Respondent shipped paint, lacquer and thinner waste as well as aerosol cans under manifest #002338532GBF(1/17/14), however failed to provide a waste code in Box 13 for the aerosol cans, which is in violation of regulations at 6 NYCRR §372.2(b)(1).

#### Fifth Violation

11. Regulations at 6 NYCRR §372.2(b)(2)(ii) requires that the generator, for each hazardous waste listed in Box 9 of the manifest, to confirm with the designated facility what the ultimate disposal method will be for that waste. If the receiving facility does not provide a hazardous waste management code in Box 19 of the manifest that reflects the ultimate disposal method for the hazardous waste, the generator must provide a State waste code in Box 13 of the manifest to designate the ultimate disposal method of the hazardous waste using one of the 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 June 10, 2014 inspection, Department staff determined that on the following manifests, Respondent failed to provide the waste code in Box 13 of the manifests designating the ultimate disposal method: 002106281GBF (5/22/13), 002060272GBF (10/4/13), 001832431GBF (10/29/12), 001511161GBF (12/2/11) and 001217153GBF (8/19/11), which is in violation of regulations at 6 NYCRR §372.2(b)(2)(ii).

#### Sixth Violation

13. Regulations at 6 NYCRR §372.2(b)(2)(i) require 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 in the manifest.

14. At the time of the June 10, 2014 inspection, Respondent could not produce any written communication showing that Giant Resource Recovery is authorized to accept hazardous waste, which is in violation of regulations at 6 NYCRR §372.2(b)(2)(i).

#### Seventh Violation

15. Regulations at 6 NYCRR §372.2 (b)(2)(iii) require that the generator must confirm by written communication that the designated transporter is authorized to deliver the waste to the facility on the manifest.

16. At the time of the June 10, 2014 inspection, Respondent could not produce any written communication to establish that Heritage Crystal Clean is authorized to transport hazardous waste, which is in violation of regulations at 6 NYCRR §372.2 (b)(2)(iii).

#### Eighth Violation

17. 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.

18. At the time of the June 10, 2014 inspection, Department staff determined that the LDR notification form that the company had for their aerosol cans did not have the manifest number on it, which is in violation of regulations at 6 NYCRR §376.1(g)(1)(ii).

#### Ninth Violation

19. Regulations at 6 NYCRR §376.1(g)(1)(viii) require generators to retain on-site, a copy of all notices, certifications, demonstrations, waste analysis data and other documentation pursuant to 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. This requirement applies 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, or exempted from regulation, subsequent to the point of generation.

20. At the time of the June 10, 2014 inspection, the company could not produce any LDR notification forms covering the paint, lacquer and thinner waste that they ship to Giant Resource Recovery under a manifest, which is in violation of 6 NYCRR §376.1(g)(1)(viii).

#### Tenth Violation

21. Regulations at 6 NYCRR §374-3.2(d)(4)(1) requires 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.

22. At the time of the June 10, 2014 inspection, the container holding the six 8-foot fluorescent light bulbs was not closed despite no waste being added or removed from it and the single HID was not in a container at all, which are in violation of regulations at 6 NYCRR §374-3.2(d)(4)(1).

23. During the inspection, the container was closed and the HID bulb was placed in a closed container.

#### Eleventh Violation

24. 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 one of the following phrases: “*Universal Waste- Lamp(s)*,” or “*Waste Lamp(s)*,” or “*Used Lamps(s)*.”

25. At the time of the June 10, 2014 inspection, the single HID light bulb was not labeled or marked with the appropriate works, which is a violation of regulations at 6 NYCRR §374-3.2(e)(5). During.

26. During the inspection, the HID bulb was placed in a closed container and the container was labeled with the appropriate words.

#### Twelfth Violation

27. 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 was has been accumulated by marking the date, maintaining an inventory, or any other method.

28. At the time of the June 10, 2014 inspection, the container holding the six 8-foot fluorescent light bulbs was not marked with an accumulation start date; the single HID was also not marked with an accumulation start date; the container holding the used battery was not marked with an accumulation start date; and the company had no other way of showing how long these bulbs had been in storage, all of which is a violation of regulations at 6 NYCRR §374-3.2(f)(3).

29. During the inspection, the container holding the bulbs and the container holding the used batteries was marked with an accumulation start date. The HID bulb was placed in a closed box, and the box was marked with an accumulation start date.

#### Civil Penalties

30. 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

31. 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

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

With respect to the aforesaid violation, a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is hereby assessed against the Respondent which shall be payable to the New York State Department of Environmental Conservation by money order or certified check.

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

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.

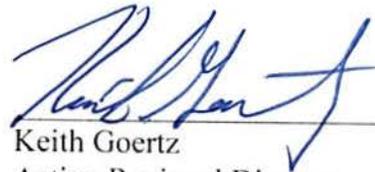
X. Schedule of Compliance

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

Dated: *October 14*, 2014  
Rotterdam, NY

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

BY:

A handwritten signature in blue ink, appearing to read "Keith Goertz", written over a horizontal line.

Keith Goertz  
Acting 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.

PGS Millwork, Inc.

BY: Peggy Moon  
TITLE: Vice President - Finance  
DATE: 10/13/14

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

On the 13<sup>th</sup> day of October in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Peggy Moon, 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 <sup>her</sup> he executed the same in <sup>her</sup> his capacity, and that by <sup>her</sup> his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lucia J. Ference  
Notary Public  
Qualified in the County of: Columbia  
My Commission Expires: May 6, 2018

LUCIA J. FERENCE  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN COLUMBIA COUNTY  
NO. 01FE6071866  
COMMISSION EXPIRES MAY 6, 20 18

## Schedule of Compliance

1. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, written documentation showing that the name of the emergency coordinator, telephone number of the emergency coordinator and the location of the spill material have been posted.
2. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, written documentation showing that all of the accumulation containers are closed except when waste is being added or removed.
3. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, a standard operating procedure that describes how PGS Millwork, Inc., shall ensure that every manifest is completed correctly including putting the hazardous waste codes in Box 13 and the code designating the ultimate disposal method (L, B, T or R) in Box 13 in the event that the receiving facility does not provide a hazardous waste management code in Box 19 of the manifest that reflects the ultimate disposal method for the hazardous waste.
4. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, documentation showing that Giant Resource Recovery is authorized to accept hazardous waste and that Heritage Crystal Clean is authorized to transport hazardous waste.
5. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, a standard operating procedure which describes how PGS Millwork, Inc., will ensure that every land disposal restriction notification form is completed correctly and Respondent must retain these forms for all hazardous waste shipped off-site in the last three years.
6. Within 10 days of the effective date of this Order, Respondent shall submit to the Department:
  - 1) A standard operating procedure showing how the Petersen Geller Spurge, Inc. will ensure that all containers holding used lamps are added or removed from the containers.
7. Within 10 days of the effective date of this Order, Respondent shall submit to the Department:
  - 1) A standard operating procedure showing how the Petersen Geller Spurge, Inc. 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 to the Department:
  - 1) A standard operating procedure showing how the Petersen Geller Spurge, Inc. will ensure that all containers holding used lamps are marked with an accumulation start date.