

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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CERTIFIED - RETURN RECEIPT REQUESTED
7013 1090 0002 3365 3731

May 20, 2015

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

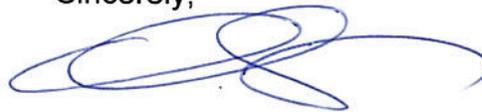
Re: Order of Consent
Samaritan Hospital of Troy, NY
R4-2014-0918-154

Dear Mr. Frankel:

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

This will also acknowledge receipt of \$15,385 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 13 of the Environmental Conservation Law;

-by-

ORDER ON CONSENT
File No. R4-2014-0918-154

Samaritan Hospital of Troy, New York
2215 Burdett Avenue
Troy, NY 12180

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 August 14, 2014, Department staff performed an inspection ("inspection") of Samaritan Hospital of Troy, New York, located at 2215 Burdett Avenue, Troy, New York ("facility"). The facility has EPA Identification Number NYD020675211.

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, Respondent failed to make a hazardous waste determination for the material that came in contact with nicotine or warfarin. Instead, Respondent threw the wrapping material and containers holding warfarin and nicotine in the non-hazardous garbage which is in violation of regulations at 6 NYCRR §372.2(a)(2).

Second Violation

5. Regulations at 6 NYCRR §372.2(a)(8)(3) provide that "a generator who generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate non-acute hazardous waste on-site for 180 days or less without being subject to the permitting provisions of Part 373 of this Title, provided that:

- the generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies."

6. At the time of the inspection, Respondent had not provided training to its employees to familiarize them with proper waste handling and emergency procedures, which is in violation of regulations at 6 NYCRR §372.2(a)(8)(3).

Third and Fourth Violations

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

8. At the time of the inspection, the two containers holding used pharmaceuticals in the pharmacy 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).

9. The two containers holding used pharmaceuticals in the pharmacy were not marked with the words “Hazardous waste.” Furthermore, the container holding chemotherapy drug waste on the sixth floor 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).

Fifth Violation

10. Regulations at 6 NYCRR §374-3.2(d)(4)(i) require that “A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

- 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.”

11. At the time of the inspection, three boxes out of 10 boxes holding used lamps were open despite no waste being added or removed from them which is in violation of regulations at 6 NYCRR §374-3.2(d)(4)(i).

Sixth Violation

12. Regulations at 6 NYCRR §374-3.2(e)(5) require 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:

- each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: Universal Waste-Lamp(s), or Waste Lamp(s), or Used Lamp(s).”

13. At the time of the inspection, all 10 boxes holding the used lamps were not marked with appropriate words which is in violation of regulations at 6 NYCRR 374-3.2(e)(5).

Seventh Violation

14. 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.

15. At the time of the inspection, all 10 boxes holding used lamps were not marked with an accumulation start date and the hospital did not have any other means of showing how long these lamps had been in storage, which is in violation of regulations at 6 NYCRR §3743.2(f)(3).

Eighth Violation

16. Regulations at 6 NYCRR §374-3.2 (2)(g) requires that “*a small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.*”

17. At the time of the inspection, the training program that the Respondent gives to its staff involved with universal waste management does not include anything about universal waste management or responding to a spill/groundwater contamination incident, which is in violation of regulations at 6 NYCRR §374-3.2 (2)(g).

Civil Penalties

18. 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

19. 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 alleged violations, a civil penalty in the amount of EIGHTEEN THOUSAND ONE HUNDRED DOLLARS (\$18,100) of which FIFTEEN THOUSAND THREE HUNDRED EIGHTY FIVE DOLLARS (\$15,385) 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 TWO THOUSAND SEVEN HUNDRED FIFTEEN DOLLARS (\$2,715) 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.

Samaritan Hospital of Troy, New York

BY: *Norman E. Dascher, Jr.*

TITLE: CEO

DATE: 5/12/15

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

On the 12th day of MAY in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared NORMAN E. DASCHER, Jr., 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: 10/19/18

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

Schedule of Compliance

Schedule of Compliance

1. Within 10 days of the effective date of the Order, Samaritan Hospital shall submit to the Department, a notice under Part 371.1(c)(7) for the used electronics, and lead aprons sent off-site for recycling.
2. Within 10 days of the effective date of the Order, Samaritan Hospital shall submit to the Department, a policy describing:
 - (1) how Samaritan Hospital will determine whether their wastes are hazardous wastes;
 - (2) how Samaritan Hospital will ensure that all hazardous waste are properly managed and disposed;
 - (3) how Samaritan Hospital will keep records of how much of each hazardous waste generated during each month; and (4) how Samaritan Hospital will ensure that these waste generation records are kept for three years from the effective date of this Order.
3. Within 10 days of the effective date of the Order, Samaritan Hospital shall submit to the Department, a policy describing how Samaritan Hospital will ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures.
4. Within 10 days of the effective date of the Order, Samaritan Hospital shall submit to the Department, a policy describing how Samaritan Hospital will ensure that all hazardous waste accumulation containers are kept closed unless wastes are being added or removed from the containers.
5. Within 10 days of the effective date of the Order, Samaritan Hospital shall submit to the Department, a policy describing how Samaritan Hospital will ensure that all hazardous waste accumulation containers are labeled with the words "Hazardous Waste" and with other words that identify the contents of the containers.
6. Within 10 days of the effective date of the Order, Samaritan Hospital shall submit a policy describing how Samaritan Hospital will ensure that all containers holding universal waste lamps are kept closed unless wastes are being added or removed from the containers.
7. Within 10 days of the effective date of the Order, Samaritan Hospital shall submit a Policy describing how Samaritan Hospital will ensure that all containers holding universal waste are marked with any one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."
8. Within 10 days of the effective date of the Order, Samaritan Hospital shall submit a policy describing how Samaritan Hospital will ensure that all containers holding universal waste are marked with accumulation start dates.

9. Within 10 days of the effective date of the Order, Samaritan Hospital shall submit to the Department, documentation showing that each person handling universal waste have received training about the proper handling of these wastes and emergency procedures.