

**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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Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 2668

March 25, 2014

Robert R. Tyson, Esq.  
Bond, Schoeneck & King  
One Lincoln Center  
Syracuse, NY 13202

Re: Order of Consent  
R4-2014-0115-5

Dear Mr. Tyson:

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

This will also acknowledge receipt of \$6,400 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

cc: H. Bezner

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. R4-2014-0115-5

St. Mary's Healthcare  
427 Guy Park Ave  
Amsterdam, NY 12010

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 April 12, 2013, Department staff performed an inspection ("inspection") of St. Mary's Healthcare located at 427 Guy Park Avenue, Amsterdam, New York ("facility"). The facility has EPA Identification Number NYD008017014.

First Violation

3. At the time of the inspection, Department staff determined that Respondent had not made a hazardous waste determination for the wastes disposed of, specifically Lindane soap, used Nicotine patches, packing material for Nicotine and Warfarin, and are currently disposing of these wastes in their regular commercial trash.

4. Regulations at 6 NYCRR 372.2(a)(2) provide that "A person who generates a solid waste must determine if that waste is a hazardous waste using the following method:

(i) first determine if the waste is excluded from regulation under section 371.1(e), exclusions, of this Title;

(ii) then determine if the waste is listed as a hazardous waste in section 371.4 of this Title;

(NOTE: Even if the waste is listed, the generator still has an opportunity under section 370.3(c) of this Title to demonstrate that the waste from this particular facility or operation is not a hazardous waste.)

*(iii) for purposes of compliance with Part 376 of this Title, or if the waste is not listed as a hazardous waste in section 371.4 of this Title, the generator must then determine whether the waste is identified in section 371.3 of this Title by either:*

*('a') testing the waste according to the methods set forth in Appendix 19, 20 or 21, infra, or according to an equivalent method approved under section 370.3(b) of this Title; or*

*('b') applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.*

*(iv) If the waste is determined to be hazardous, the generator must refer to Parts 370 through 374 and 376 of this Title, for possible exclusions or restrictions pertaining to management of the specific waste.”*

5. Respondent violated regulations at 6 NYCRR 372.2(a)(2) by failing to make a hazardous waste determination for Lindane soap, used Nicotine patches, and packing material for Nicotine and Warfarin.

#### Civil Penalties

6. 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

7. 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 SEVEN THOUSAND NINE HUNDRED NINETY NINE DOLLARS (\$7,999) is hereby assessed against the Respondent of which SIX THOUSAND FOUR HUNDRED DOLLARS (\$6,400) 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 of ONE THOUSAND FIVE HUNDRED NINETY NINE DOLLARS (\$1,599) 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.

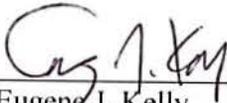
XI. Termination of Order on Consent

This Order on Consent, including the Schedule of Compliance requirements, shall terminate one year after the effective date of this Order on Consent.

Dated: 3/25, 2014  
Rotterdam, NY

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

BY:

  
\_\_\_\_\_  
Eugene J. Kelly  
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.

St. Mary's Healthcare

BY: Victor Giulianelli

TITLE: President/CEO

DATE: 3-11-14

STATE OF NEW YORK )

)ss.:

COUNTY OF Montgomery

On the 11<sup>th</sup> day of March in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Victor Giulianelli 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.

Nancy C. Capel  
Notary Public  
Qualified in the County of: Montgomery  
My Commission Expires: 12-28-2017

**Nancy C. Capel**  
Notary Public, State of New York  
Qualified in Montgomery County  
Reg. No. 01CA4916902  
Commission Expires 12/28/ 2017

## Schedule of Compliance

- 1) Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a plan for determining which of St. Mary's pharmaceuticals are hazardous waste; how much is generated during a month; how much of these are acute hazardous waste and how each waste will be disposed of in accordance with the regulations. This plan shall include an implementation schedule.