

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of General Counsel, Region 4  
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**CERTIFIED - RETURN RECEIPT REQUESTED**

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May 10, 2017

Richard A. Frankel, Esq.  
Iseman Cunningham  
Riester & Hyde LLP  
9 Thurlow Terrace  
Albany, NY 12203

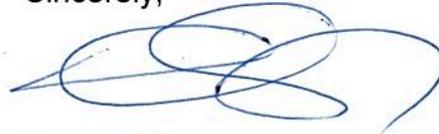
Re: Order on Consent  
R4-2017-0124-6  
St. Peter's Hospital of the  
City of Albany

Dear Mr. Frankel:

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

This will also acknowledge receipt of \$9,900 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: 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. R4-2017-0124-6

St. Peter's Hospital of the City of Albany  
315 South Manning Blvd  
Albany, New York 12208

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 January 6, 2017, Department staff performed an inspection ("inspection") of St. Peter's Hospital located at 315 South Manning Blvd, Albany, New York ("facility"). The facility has EPA Identification Number NYD060533031.

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 determine if (1) wrappers and blister packs that warfrin comes in, which is in violation of regulations at 6 NYCRR § 372.2(a)(2).

Second Violation

5. Regulations 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 to the generator:

- keeps all containers closed except if they are in use.

6. At the time of the inspection, the 5-gallon pail holding nicotine waste in the sixth floor detox room was open despite no waste being added or removed from it. Also, the 2.5-gallon container holding Clearite in the Pathology lab was open despite no waste being added or removed from it.

Third Violation

7. Regulations 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:

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

8. At the time of the inspection, the following containers in the stated locations were either missing the words “*Hazardous Waste*,” words describing the container’s content or both, which is in violation of regulations at 6 NYCRR §372.2(a)(8)(i)(a).

LOCATION	CONTAINER
In-patient Pharmacy	1- gallon bottle holding used pharmaceuticals
In-patient Pharmacy	5 - gallon bottle holding used pharmaceuticals
In-patient Pharmacy	1- gallon container holding chemotherapy waste
In-patient Pharmacy	5 - gallon container holding chemotherapy waste
Room 4238	1- gallon container holding waste warfrin
Sixth Floor Detox Room	5 - gallon container holding nicotine waste
Pathology Lab	2.5 - gallon container holding waste Clearite
Room 3643D	1 - gallon bottle holding used pharmaceuticals

Fourth Violation

9. Regulations at 6 NYCRR §372.2(c)(2)(i) requires a generator who ships his hazardous waste off-site to submit an Annual Report on forms specified by the Commissioner no later than March 1, 2017 for the proceeding calendar year. Two copies are to be submitted to the Department.

10. At the time of the inspection, Respondent failed to file an Annual Report for 2015 despite having shipped more than 2.2 pounds of acute hazardous waste during several months in 2015, which is in violation of regulations at 6 NYCRR §372.2(c)(2)(i).

#### Fifth Violation

11. Regulations at 6 NYCRR §373-3.2(g)(4) requires the owner or operator to maintain the following documents and records at the facility:

- a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position [related to hazardous waste management].

12. Respondent provides training to their employees in the form of drills and classroom training. However, they did not have a written description of this training, which is in violation of regulations at 6 NYCRR §373-3.2(g)(4).

#### Sixth Violation

13. Regulations at 6 NYCRR §373-3.2(g)(4) require the owner or operator to maintain the following documents and records at the facility:

- records that document that the training or job experience required has been given to, and completed by facility personnel.

14. Respondent provides training to their employees in the form of drills and classroom training. However, they did not maintain records to establish that their employees involved with hazardous waste management, attended this training, in violation of regulations at 6 NYCRR §373-3.2(g)(4)

#### Seventh Violation

15. Regulations at 6 NYCRR §373-3.3 (b) requires a facility to be operated and maintained to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water which could threaten human health or the environment.

16. At the time of the inspection, in the sixth floor detox room, there was a 5-gallon pail holding nicotine waste. On the floor behind the container, there was a pile of nicotine waste that had not been placed in a container. Thus, Respondent had a release of nicotine waste and had failed to minimize the possibility of such, which is in violation of regulations at 6 NYCRR §373-3.3 (b).

#### Eighth Violation

17. Regulations at 6 NYCRR §374-3.4(c) requires the following content in a Contingency Plan:

- the Plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communication and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

18. At the time of the inspection, the Contingency Plan did not describe the capability of their emergency equipment. Instead, it had "\*\*\*\*\*" listed, which is in violation of regulations at 6 NYCRR §374-3.4(c).

#### Ninth Violation

19. 40 CFR 273.14 (d)(1) requires universal waste mercury-containing equipment (i.e. each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "*Universal Waste-Mercury Containing Equipment*," "*Waste Mercury-Containing Equipment*," or "*Used Mercury-Containing Equipment*."

20. At the time of the inspection, there was a 5-gallon pail on the waste dock that held waste mercury-containing waste. However, it was labeled "*Manufactured Article Lead Containment*." Thus it was not labeled with the appropriate words, and, therefore, was in violation of 40 CFR 273.14 (d)(1).

#### 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 SIXTEEN THOUSAND DOLLARS FIVE HUNDRED DOLLARS (\$16,500) is hereby assessed against the Respondent of which NINE THOUSAND NINE HUNDRED DOLLARS (\$9,900) 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 SIX THOUSAND SIX HUNDRED DOLLARS (\$6,600) 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. 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.

VIII. 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.

IX. Termination of Order on Consent

This Order on Consent shall terminate one year after the effective date of this Order on Consent.

X. 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 Department or the Respondent.

XI. 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 8*, 2017  
Rotterdam, NY

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
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Keith Goertz  
Regional Director  
Region 4

