

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
7017 1070 0001 0125 8985

October 12, 2018

Janet M. Thayer
Office of General Counsel
University at Albany
University Hall 208
1400 Washington Avenue
Albany, NY 12222

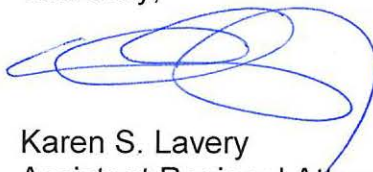
Re: Order on Consent
R4-2018-0723-163

Dear Ms. Thayer:

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

This will also acknowledge receipt of \$3,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: A. Elliott

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 27,
Title 9 of the Environmental Conservation Law;

-by-

ORDER ON CONSENT
File No. R4-2018-0723-163

State University of New York
University at Albany
State University Plaza
1400 Washington Ave
Albany, NY 12222

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. State University of New York University of Albany ("SUNY Albany") is located at 1400 Washington Ave, Albany, New York ("facility"). The facility is classified as a Large Quantity Generator with a registration number of NYD073129793.

Regulation

3. Regulations at 6 NYCRR §372.2(b)(5)(i) requires that "*No generator may: offer a shipment of hazardous waste for transport off-site without an accompanying manifest;*".

First Violation

4. In 2012, Respondent planned to demolish Building 25 at its site. They had SUNY Construction Fund hire a consultant "AE" to survey the building to identify the presence of hazardous materials including asbestos, lead-based paint, PCB caulk and universal wastes. SUNY Construction Fund also hired another company "AOW" to oversee the demolition. "AOW" in turn hired "DEL" to manage the disposal of the waste.
5. "AE" prepared a survey report which identified many hazardous and non-hazardous wastes. Sections 7.1.2 of the survey report identified the residue on the sink trap located in room 117 and the ash in the incinerator as being hazardous wastes because the level of mercury exceeded the regulatory limits (0.2 ppm). During the demolition, all the wastes were placed in roll-offs and 55-gallon drums including the residue on the sink trap located in room 117 and the ash in the incinerator which was placed in one 55-gallon drum.

6. “DEL” arranged for the hazardous waste to be sent to a permitted hazardous waste treatment storage or disposal facility and the non-hazardous waste to be sent to the Albany landfill and Seneca Meadows. Respondent provided hazardous waste manifests and other shipping documents supporting this. However, none of the documents establish what happened to the residue on the sink trap located in room 117 and the ash in the incinerator. Furthermore, in its December 6, 2017 letter to AOW Associates, “DEL” stated that it “*is unable to provide the waste shipment documentation of the removal of the mercury as required for the Building 25 Health Center Renovations.*”

7. As the Department has not been provided with a hazardous waste manifest for the shipment of the mercury and believes that no hazardous waste manifest exists for the shipment of this waste in the absence of evidence to the contrary, Respondent is in violation of regulations at 6 NYCRR §372.2(b)(5)(i).

Civil Penalties

8. 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

9. 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

Respondent is hereby assessed a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3,000) for the violations stated herein. The civil penalty shall be paid with the return of the signed and notarized Order. Payment shall be made by bank or certified check or money order made out to the Department of Environmental Conservation.

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.

V. 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.

VI. 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.

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 or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

Dated: *October 11,* 2018
Rotterdam, NY

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

