

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

7012 3050 0000 4246 2613

April 28, 2014

Mr. Thomas Rathbone
State University of New York
College at Oneonta
Ravine Parkway
Oneonta, NY 13820

Re: Order of Consent
R4-2014-0219-25

Dear Mr. Rathbone:

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

This will also acknowledge receipt of \$5,499 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

In the Matter of Violations of Article 27,
Title 13 of the Environmental Conservation Law;

-by-

ORDER ON CONSENT
File No. R4-2014-0219-25

State University of New York
College of Oneonta
Ravine Parkway
Oneonta, NY 13820

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 13 of the Environmental Conservation Law (the "ECL").
2. On December 10, 2013, Department staff conducted an inspection ("inspection") of State University of New York, College of Oneonta, located at Ravine Parkway, Oneonta, New York ("facility"). The facility has EPA Identification Number NYD045879038.

First Violation

3. 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.”

4. At the time of the inspection, Respondent’s garage personnel admitted that they placed hazardous waste batteries in the commercial non-hazardous trash and put non-empty aerosol cans in the same drum as their used oil filters. By failing to make a hazardous waste determination for hazardous waste batteries and non-empty aerosol cans, Respondent violated regulations at 6 NYCRR 372.2(a)(2).

Second Violation

5. Regulations at 6 NYCRR §372.2(a)(8)(i)(a)(2) 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:

-Keeps all containers closed except if they are in use;

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

6. At the time of the inspection, Department staff saw the following containers were not closed; not labeled with the words “Hazardous Waste;” and/or not marked with words identifying their contents:

Location	Container Size	Waste in Container	Problem
PS 203	2 Liter	Hexane	Missing the words “Hazardous Waste” and open
PS 203	1 Liter Flask	Hexane	Missing the words “Hazardous Waste” and open
PS 203	4 Liter Beaker	Element waste metals	Missing the words “Hazardous Waste” and open
PS 203	2 Liter	Silver contaminated waste	Missing the words “Hazardous Waste” and open
PS 202	4 Liter	Solvent	Missing the words “Hazardous Waste” and open
PS 202	2 Liter	Silver contaminated waste	Missing the words “Hazardous Waste”

			and open
PS 202	4 Liter Beaker	Element waste metals	Missing the words "Hazardous Waste" and open
PS 202	1 Gallon	Lead filter waste	Missing the words "Hazardous Waste"
PS 202	1 Liter	Barium Chloride	Missing the words "Hazardous Waste" and open
PS 201	1 Gallon	Heavy Metals	Missing the words "Hazardous Waste"
PS 201	1 Gallon	Heavy Metals	Missing the words "Hazardous Waste"
PS 206	2 Liter	HPLC, Acetonitrile, Heavy Metals	Missing the words "Hazardous Waste" and open
PS 206	1 Gallon	Organics	Missing the words "Hazardous Waste"
PS 206	1 Gallon	Unknown	Missing the words "Hazardous Waste" and other words identifying its contents
PS 206 2nd Bench	1 Liter Beaker	Methanol vials	Missing the words "Hazardous Waste" and other words identifying its contents as well as open
PS 206 2nd Bench	600 ml Beaker	Vials	Missing the words "Hazardous Waste" and other words identifying its contents as well as open
PS 207	2 Liter	Acid	Missing the words "Hazardous Waste"
PS 208A	4 Liter	Potassium permanganate	Missing the words "Hazardous Waste"
PS 208	4 Liter	Imine waste	Missing the words "Hazardous Waste"
PS 208	4 Liter	Halogenated solvent waste	Missing the words "Hazardous Waste"

PS 208	4 Liter	Aqueous organic waste	Missing the words "Hazardous Waste"
PS 208	1 Liter	NMR waste	Open- Fixed during the inspection

7. Respondent violated regulations at 6 NYCRR §372.2(a)(8)(i)(a)(2) by failing to properly close or mark the containers as indicated in paragraph No. 6 above.

Third Violation

8. Regulations at 6 NYCRR §372(b)(2)(i) provide that *“prior to shipment of hazardous waste off the site at which such waste was generated, the generator must designate on the manifest one facility which is authorized to handle the waste described on the manifest. A generator may also designate on the manifest one alternate facility which is authorized to handle the waste in the event an emergency prevents delivery of the waste to the primary designated facility. 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 on the manifest.”*

9. At the time of the inspection, Respondent’s employees were unable to produce any written documentation showing that Spring Grove (OH), Ross Incineration, Safety Kleen and Clean Harbors – Twinsburg and Clean Harbors are authorized to accept hazardous waste, which is in violation of regulations at 6 NYCRR §372(b)(2)(i)

Fourth Violation

10. Regulations at 6 NYCRR §372.2(b)(2)(iii) require that *“the generator must confirm by written communication from the designated transporter(s) that they are authorized to deliver the manifested waste to the designated treatment, storage or disposal facility.”*

11. At the time of the inspection, Respondent was unable to produce any written documentation showing that Horwitz and Chemical Pollution Control are authorized to transport hazardous waste, which is in violation of regulations at 6 NYCRR §372.2(b)(2)(iii).

Fifth Violation

12. Regulations at 6 NYCRR §373-3.2(g)(4)(ii) provide that the owner or operator *“ must maintain a written job description for each position listed under subparagraph (i) of this paragraph. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education or other qualifications, and duties of employees assigned to each position.”*

13. At the time of the inspection, Respondent provided a job description for Norm Payne but not Tom Rathbone, Terry Zimmer, Rick Roberts or Tom Waterhouse, which is in violation of regulations at 6 NYCRR §373-3.2(g)(4)(ii).

Sixth Violation

14. Regulations at 6 NYCRR 373-3.2(g)(1)(ii) require that the training program “*must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.*”

15. At the time of the inspection, Respondent failed to provide documentation to establish that the training program is directed by a person trained in hazardous waste management procedures, which is in violation of regulations at 6 NYCRR 373-3.2(g)(1)(ii).

Seventh Violation

16. Regulations at 6 NYCRR 373-3.2(g)(5) require that “*training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.*”

17. At the time of the inspection, Respondent failed to provide documentation to establish that training records on current personnel are kept permanently at the facility until closure, which is in violation of regulations at 6 NYCRR 373-3.2(g)(5).

Eighth Violation

18. Regulations at 6 NYCRR 373-3.4(c)(5) require that the contingency plan “*must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications 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.*”

19. At the time of the inspection, Department staff reviewed Respondent’s contingency plan and determined that it did not contain 1) a list of all emergency equipment and decontamination equipment and 2) the location, description, and capacity outline of each item on the emergency equipment list, which is in violation of regulations at 6 NYCRR 373-3.4(c)(5).

Civil Penalties

20. 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

21. 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

In respect to the aforesaid violation, a civil penalty in the amount of FIVE THOUSAND FOUR HUNDRED NINETY NINE DOLLARS (\$5,499) is hereby assessed against the Respondent and shall be payable to the New York State Department of Environmental Conservation by money order or certified check.

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.

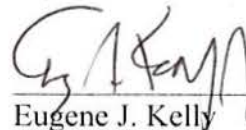
IX. Summary Abatement

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.

Dated: 4/25, 2014
Rotterdam, NY

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

BY:

A handwritten signature in black ink, appearing to read "E. Kelly", written over a horizontal line.

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.

State University of New York
College of Oneonta

BY: Tom Rathbone

TITLE: AVP FOR FACILITIES & SAFETY

DATE: 4/10/14

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

On the 10th day of April in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Tom Rathbone, 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.

Laura M Emmett

Notary Public
Qualified in the County of:
My Commission Expires:

LAURA M. EMMETT
Notary Public in the State of New York
No. 01EM6049019
Qualified in Otsego County
Commission Expires October 2, 2014