

**New York State Department of Environmental Conservation**

**Office of General Counsel, Region 4**

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

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



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 4761

August 12, 2013

President Stephen Ainley  
Office of the President  
Union College  
807 Union Street  
Schenectady, NY 12308

Re: Order on Consent  
R4-2013-0624-88

Dear Mr. Ainley:

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

This will also acknowledge receipt of \$1439.00 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

cc: H. Brezner

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. R4-2013-0624-88

Union College  
807 Union Street  
Schenectady, NY 12308

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 May 22, 2013, Department staff performed an inspection ("inspection") of Union College, Science & Engineering Building, Room S316, 807 Union Street, Schenectady, New York ("facility"). The facility has EPA Identification Number NYD980773964.

First Violation

3. At the time of the inspection, Department staff determined that Respondent had not made a hazardous waste determination for the wastes in the containers located in areas S332, S340, S363, S335, S219, S213, S211, Olin 303, Visual Arts 103 Print Shop.

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 the wastes in the containers located in areas S332, S340, S363, S335, S219, S213, S211, Olin 303, Visual Arts 103 Print Shop.

#### Second and Third Violations

6. At the time of the inspection, Department staff determined that the containers located in areas S335 and S102 were open despite no waste being added or removed from the container.

7. At the time of the inspection, Department staff determined that containers located in areas S332, S340, S335, S219, S215, S218, S211, S212, S102, Wold 206, Olin 303, Visual Arts 36, and Paint Shop, were not marked with the words “Hazardous Waste” and other words identifying their contents.

8. 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:

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

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

9. Respondent violated regulations at 6 NYCRR 372.2(a)(8)(i)(a) by failing to keep the containers located in areas S335 and S102, closed when they were not in use.

10. Respondent violated regulations at 6 NYCRR 372.2(a)(8)(i)(a)(b) by failing to mark the containers located in areas S332, S340, S335, S219, S215, S218, S211, S212, S102, Wold 206, Olin 303, Visual Arts 36, and Paint Shop, with the words “Hazardous Waste” and other words which would identify the contents of the containers.

#### Fourth Violation

11. At the time of the inspection, Department staff determined that the battery collection container in the Facilities Entryway was not marked with the appropriate words.

12. Regulations at 6 NYCRR 374.3.2(e)(1) require that “*universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste - Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"*”

13. Respondent violated regulations at 6 NYCRR 374.3.2(e)(1) by failing to properly mark the battery collection container located in the Facilities Entryway.

#### Fifth Violation

14. At the time of the inspection, Department staff determined that the bulb collection container in the Facilities Entryway was not marked with the appropriate words.

15. Regulations at 6 NYCRR 374.3-(e)(5) require that “*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)."*”

16. Respondent violated regulations at 6 NYCRR 374.3-(e)(5) by failing to properly mark the bulb collection container located in the Facilities Entryway.

#### Sixth Violation

17. At the time of the inspection, Department staff determined that the bulb collection and battery collection containers located in the Facilities Entryway could not demonstrate the length of time that the universal waste had been accumulated.

18. Regulations at 6 NYCRR 374-3.2(f)(3) provide that “*a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:*”

*(i) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;*

*(ii) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;*

*(iii) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;*

*(iv) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;*

*(v) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or*

*(vi) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.”*

19. Respondent violated regulations at 6 NYCRR 374-3.2(f)(3) by failing to mark an accumulation start date on the bulb collection and battery collection containers located in the Facilities Entryway.

### 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

With respect to the aforesaid violations, a civil penalty in the amount of TWO THOUSAND THREE HUNDRED NINETY EIGHT DOLLARS (\$2,398) is hereby assessed against the Respondent of which ONE THOUSAND FOUR HUNDRED THIRTY NINE DOLLARS (\$1,439) 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 NINE HUNDRED FIFTY NINE DOLLARS (\$959) 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 Respondent's 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.

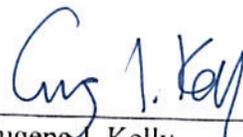
XI. Termination of Order on Consent

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

Dated: 8/12, 2013  
Rotterdam, NY

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

BY:

  
\_\_\_\_\_  
Eugene J. Kelly  
Regional Director  
Region 4



## Schedule of Compliance

- 1) Within 10 days of the effective date of the Order, Respondent shall determine if the waste in the containers identified in paragraph # 3 of the Order constitute hazardous waste, and shall submit the results of this determination to the Department including the basis for the determination.
- 2) Within 10 days of the effective date of the Order, Respondent shall submit to the Department, documentation to establish that the containers identified in paragraph #6 of this Order, have been closed.
- 3) Within 10 days of the effective date of the Order, Respondent shall submit to the Department, documentation establishing that the containers identified in paragraph #7 of this Order, have been labeled with the words "*Hazardous Waste*" and other words identifying their contents. This submittal must include procedures that Respondent will implement to prevent this violation from reoccurring.
- 4) Within 10 days of the effective date of the Order, Respondent shall submit to the Department, documentation establishing that the battery collection container in the Facilities Entryway has been labeled with one of the following phrases: "*Universal Waste-Battery(ies),*" or "*Waste Battery(ies),*" or "*Used Battery(ies).*"
- 5) Within 10 days of the effective date of the Order, Respondent shall submit to the Department, documentation establishing that the lamp collection container in the Facilities Entryway has been labeled with one of the following phrases: "*Universal Waste-Lamp(s),*" or "*Waste Lamp(s),*" or "*Used Lamp(s).*"
- 6) Within 10 days the effective date of the Order, Respondent shall submit to the Department, documentation establishing that Respondent has marked the lamp collection container and the battery collection container in the Facilities Entryway with an accumulation start date.