



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 *Del. C.* § 6005

Order No. 2015-WH-0017

*PERSONALLY SERVED BY AN ENVIRONMENTAL
PROTECTION OFFICER*

Issued To:

Mr. Joe Leonetti
Senior Director of Operations
St. Francis Hospital, Inc.
701 N. Clayton St.
Wilmington, DE 19805

Registered Agent:

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Dear Mr. Leonetti:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found St. Francis Hospital ("Respondent" or "SFH") in violation of 7 *Del. C.* Chapters 60 and 63, 7 DE Admin. Code 1302, Delaware's *Regulations Governing Hazardous Waste* ("DRGHW"), and 7 DE Admin. Code 1301, Delaware's *Regulations Governing Solid Waste* ("DRGSW"). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 *Del. C.* § 6005(b)(3).

BACKGROUND

Respondent operates a full-service, non-profit, community hospital, located in Wilmington, Delaware, that accommodates 300 beds, according to SFH representatives. As a healthcare provider, Respondent offers general medical services, emergency care, surgery units

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and women's services. Respondent is a member of Catholic Health East¹, a multi-institutional Catholic health system.

Respondent is a generator of hazardous waste and is, therefore, subject to compliance inspections, by the Solid and Hazardous Waste Management Section (SHWMS"), pursuant to 7 DE Admin. Code 1302, Delaware's *Regulations Governing Hazardous Waste* ("DRGHW").

On May 13, 2014, the Department conducted a hazardous waste compliance assessment at SFH. On the basis of the information gathered during the assessment, the Department found Respondent to be in violation of applicable state statutes and regulations governing the generation and accumulation of hazardous waste. The violations, as a result, triggered a new hazardous waste status designation of large quantity generator ("LQG")² for Respondent.

The Department formally notified Respondent of its violations by issuing Notice of Violation ("NOV") No. 14-HW-16, dated July 17, 2014. The NOV required Respondent to immediately comply with the NOV's requirements and to submit documentation demonstrating compliance within thirty (30) days of receipt of the NOV.

The Department received a Return to Compliance ("RTC") package from Respondent, on August 19, 2014, in response to the NOV. Though the NOV required immediate compliance upon receipt by Respondent, Respondent's letter, submitted along with the RTC package, stated (in reference to one of the violations) that "[E]ffective October 1, 2014, hazardous waste will not be mixed with the trash." The statement suggested that Respondent, even after receipt of the NOV on July 30, 2014, continued to mix hazardous waste with trash that was being offered to a solid waste hauler, for disposal at a solid waste facility, which is not permitted to receive hazardous waste.

A Department representative contacted Respondent, by e-mail, on August 20, 2014, expressing concern for Respondent's statement in the RTC package and reaffirming that Respondent must take immediate steps to cease mixing hazardous waste with trash. As a result, the Department received a letter on August 25, 2014, from Respondent, stating that SFH negotiated a contract with Stericycle, a medical waste disposal company, and is now in compliance with the DRGHW, as it relates to pharmaceutical hazardous waste.

Upon reviewing the remainder of Respondent's RTC package, the Department determined that Respondent had submitted documentation correcting the remaining violations.

¹ Catholic Health East and Trinity Health merged together as of May 1, 2014, to form one large Catholic health care system.

² Generators of more than 1,000 kilograms (2,200 pounds) of hazardous waste in any calendar month are large quantity generators (Delaware's *Regulations Governing Hazardous Waste*, 2013).

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

1. Section 262.11 of DRGHW states in part:

“A person who generates a solid waste, as defined in §261.2, must determine if that waste is a hazardous waste...”

On May 13, 2014, Respondent’s representatives stated that pharmaceutical wastes and spent aerosol cans had been discarded in the trash. Failing to make a hazardous waste determination is a violation of § 262.11 of DRGHW.

2. Section 262.12(c) of DRGHW states:

“A generator must not offer his hazardous waste to transporters that have not received an EPA identification number and a Delaware hazardous waste transporter permit or to treatment, storage, or disposal facilities that have not received an EPA identification number.”

On May 13, 2014, Respondent’s representatives stated that SFH offered hazardous waste-contaminated trash to a solid waste hauler for disposal at a Delaware Solid Waste Authority (“DSWA”) facility landfill, which is not permitted to receive hazardous waste. Offering hazardous waste for disposal at an unauthorized facility is a violation of § 262.12(c) of DRGHW.

3. Section 262.20(a)(1) of DRGHW states:

“A generator who transports, or offers for transportation, hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (U.S. OMB Control Number 2050 0039) on EPA Form 8700 22 and, if necessary EPA Form 8700 22A, according to the instructions included in the appendix to this part.”

On May 13, 2014, Respondent’s representatives stated that SFH shipped hazardous waste-contaminated trash without a manifest. Failure to prepare a manifest for transporting hazardous waste is a violation of § 262.20(a)(1).

4. Section 265.37(a) of DRGHW states:

*“(a) The owner or operator must attempt in writing, with documentation of receipt, to make the following arrangements, as appropriate for the type of waste handled at his facility and potential need for the services of these organizations:
(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous*

waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

- (2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;*
- (3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and*
- (4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility."*

On May 13, 2014, Respondent failed to present proof that arrangements with local emergency response agencies had been made to familiarize such agencies with the types of hazardous waste accumulated on-site; a violation of § 265.37(a).

5. Section 11.12.8 of DRGSW states in part:

"Each generator of infectious waste shall submit an annual report on a form provided by the Department, summarizing the information from all manifests completed during the preceding calendar year. This report shall be submitted to the Department within ninety days after the end of the calendar year."

On May 13, 2014, the Department determined that Respondent generates more than 50 pounds per month of infectious waste³ as defined by Section 11.3 of the DRGSW, and is a LQG of infectious waste. Respondent has not submitted an annual infectious waste generation report since calendar year 2010; a violation of § 11.12.8.

6. Section 262.41(a) of the DRGHW states in part:

"(a) A generator must prepare and submit a single copy of an Annual Report to the State of Delaware, Department of Natural Resources and Environmental Control by no later than March 1 for the preceding calendar year."

On May 13, 2014, Department representatives determined that Respondent had been a LQG of hazardous waste for the past three years, but had not submitted an Annual Report to the Department; a violation of §262.41(a).

³ "Infectious Waste" means those solid wastes which may cause human disease and may reasonably be suspected of harboring human pathogenic organisms, or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed (Delaware's *Regulations Governing Solid Waste*, 2013).

7. Section 265.16(a)(1) of DRGHW states:

“(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensure that facility’s compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section.”

On May 13, 2014, Respondent was unable to provide documentation demonstrating that employees had received training relating to hazardous waste and its on-site management. This is a violation of § 265.16(a)(1).

8. Section 265.16(d)(1) of DRGHW states:

“(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;”

On May 13, 2014, Respondent was unable to provide a list of employees that contained job titles for the histology staff that manages the accumulation area. Failure to maintain accurate names and job titles for each position at the facility related to hazardous waste is a violation of § 265.16(d)(1).

9. Section 265.16(d)(2) of DRGHW states:

“(d) The owner or operator must maintain the following documents and records at the facility:

(2) A written job description for each position listed under paragraph (d)(1) of this section. 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 qualification, and duties of facility personnel assigned to each position;”

On May 13, 2014, Respondent was unable to provide a list of employees that contained job descriptions for the histology staff that manages the accumulation area. Failure to maintain accurate names and job titles for each position at the facility related to hazardous waste is a violation of § 265.16(d)(2).

10. Section 265.55(b) of the DRGHW states:

“The emergency coordinator annual training must address assessing possible hazards to human health and the environment that may result from a release, fire, or explosion.”

On May 13, 2014, Respondent was unable to demonstrate that the emergency coordinator had been trained; a violation of §265.55(b).

11. Section 265.174 of DRGHW states:

“The owner or operator must inspect areas where containers are stored at least weekly, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. A written record of the inspections must be maintained onsite for a minimum of 3 years.”

On May 13, 2014, Respondent was unable to provide documentation demonstrating that weekly inspections had been conducted at the hazardous waste accumulation area for the past three (3) years. This is a violation of § 265.174.

12. Section 265.51(a) of DRGHW states:

“(a) Each owner or operator must have a printed contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.”

On May 13, 2014, Respondent was unable to provide a printed contingency plan to Department representatives; a violation of § 265.51(a).

CONCLUSIONS

Based on the foregoing, the Department has concluded that St. Francis Hospital has violated the above cited regulatory provisions.

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 Del. C. § 6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$13,021.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$1,953.00, pursuant to 7 Del. C. § 6005(c), which were incurred by the Department in abating the noted violations.

Respondent shall submit one check to the Department in the amount of \$13,021.00 to pay the penalty and one check to the Department in the amount of \$1,953.00 to pay the Department's costs within 30 days from the receipt of this Assessment and Order. The checks shall be made payable to the “State of Delaware” and shall be directed to: Devera B. Scott, Deputy Attorney

General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

The Department reserves the right to take additional enforcement actions regarding these and other violations at St. Francis Hospital, including but not limited to one or more of the following: an action under 7 *Del. C.* § 6005(b)(1) seeking penalties for past violations, an action under 7 *Del. C.* § 6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to 7 *Del. C.* § 6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§ 6005(b)(3) & (c)(1).

PUBLIC HEARING AND APPEAL RIGHTS

This Notice of Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 *Del. C.* § 6005(b)(3) and (c). The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion. If no public hearing is requested within thirty days, this Order shall become final.

Any person whose interest is substantially affected by an action of the Secretary may appeal to the Environmental Appeals Board, pursuant to 7 *Del. C.* § 6008(a), within twenty (20) days of the receipt or publication of the Secretary's final order.

If no hearing is requested and no appeal is filed, the administrative penalty of \$13,021.00 and costs in the amount of \$1,953.00 shall be due and owing. In the alternative, Respondent may pay the penalty and costs within thirty (30) days of receipt of this Notice as delineated in the Assessment Section above by executing the attached waiver form and remitting two (2) checks payable to the State of Delaware in the amounts of \$13,021.00 and \$1,953.00, and mail to: Devera B. Scott, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, Delaware 19904. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Assessment and Order, which shall become a final Order.

To request a hearing, please submit your request, in writing, to:

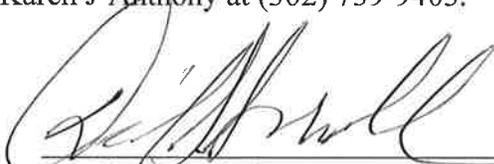
Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee that should be made payable to the: "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

If you have any questions, please contact Karen J'Anthony at (302) 739-9403.

9/28/15
Date


David S. Small, Secretary

Enf/St. Francis Hospital APO Final

cc: Devera B. Scott, Deputy Attorney General
Marjorie A. Crofts, WHS Director
Nancy Marker, SHWMS Program Administrator
Karen J'Anthony, SHWMS Program Manager
Bill Davis, SHWMS Environmental Scientist
Melissa Ferree, Environmental Engineer
Jenny Bothell, Enforcement Coordinator
Susan Baker, Paralegal
SHWMS File

WAIVER OF STATUTORY RIGHT TO A HEARING

St. Francis Hospital hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **St. Francis Hospital** will pay the administrative penalty in the amount of \$13,021.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Devera B. Scott, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and

2. **St. Francis Hospital** will reimburse the Department in the amount of \$1,953.00 which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Devera B. Scott, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

St. Francis Hospital

Date: _____

By: _____

Title: _____