

Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

**STATE OF CONNECTICUT
V.
THE DANBURY HOSPITAL**

CONSENT ORDER # WSWDH 12009

Date Issued: September 11, 2012

- A. With the agreement of The Danbury Hospital ("Respondent"), the Commissioner of Energy and Environmental Protection ("the Commissioner") finds:
1. Respondent is a 371 bed regional medical center and university teaching hospital located at 24 Hospital Avenue in Danbury, CT ("the site").
 2. Respondent is or has been a generator of hazardous waste at the site.
 3. Based on an inspection conducted by the Department of Energy and Environmental Protection ("DEEP"), Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division ("WEED"), on December 14, 15 and 20, 2011, Respondent:
 - a. Failed to perform hazardous waste determinations on all solid waste generated at the site, as required by section 22a-449(c)-102(a)(2)(A) and (B) of the Regulations of Connecticut State Agencies ("RCSA") incorporating Title 40 of the Code of Federal Regulations ("40 CFR") 262.11 with specified changes. Employees of the pharmacy department inspect containers of pharmaceuticals stored on the pharmacy shelves for expiration dates at least monthly. Any pharmaceutical containers that have reached or are near expiration are removed from the pharmacy shelves and placed in containers for later processing. Approximately every three months, personnel from EXP Pharmaceutical Services Corporation ("EXP") come to the site to package and prepare the containers of pharmaceuticals that had been removed from pharmacy shelves for shipment to the EXP facility located in Fremont, California. EXP is a pharmaceutical reverse distributor. In addition, all recalled pharmaceuticals are sent to Cardinal Health, Inc. based in Dublin, Ohio. Cardinal Health is, among other things, a pharmaceutical wholesaler. Respondent had not been performing hazardous waste determinations on any waste pharmaceuticals being sent to either EXP or Cardinal Health. Also, by failing to perform initial hazardous waste determinations, Respondent failed to

update hazardous waste determinations at least once during each twelve month period as required by section 22a-449(c)-102(a)(2)(A) of the RCSA incorporating 40 CFR 262.11, with specified changes.

- b. Failed to properly prepare manifests for all shipments of hazardous waste, as required by section 22a-449(c)-102(a)(1) of the RCSA incorporating 40 CFR 262.20(a). An incorrect EPA ID number was being used on the pre-printed manifests utilized to ship hazardous wastes to Veolia ES Technical Solutions. The pre-printed manifests contained EPA ID number CTR075394080, rather than CTD075394080.
- c. Failed to prepare, utilize and maintain manifests for all shipments of hazardous waste, as required by section 22a-449(c)-102(a)(1) of the RCSA incorporating 40 CFR 262.20(a) and (b), 262.23(a) and (b), and 262.40(a). Specifically, manifests had not been completed for shipments of characteristic and/or "P" or "U" listed RCRA hazardous waste pharmaceuticals shipped to EXP Pharmaceutical Services Corporation or shipments of recalled waste pharmaceuticals, some of which may have been hazardous, shipped to Cardinal Health.
- d. Failed to mark each container of hazardous waste with the proper Department of Transportation ("DOT") shipping name, as required by section 22a-449(c)-102(a)(1) of the RCSA incorporating 40 CFR 262.32. At the time of the inspection, there were twelve, one-gallon plastic containers of flammable lab wastes in the flammables storage room (Tower Building, second floor, room #21502), each of which lacked a proper DOT shipping name.
- e. Failed to mark each container of hazardous waste with the date upon which the accumulation began, as required by section 22a-449(c)-102(a)(1) of the RCSA incorporating 40 CFR 262.34(a)(2). At the time of the inspection, there were twelve, one-gallon plastic containers of flammable lab wastes in the flammables storage room (Tower Building, second floor, room #21502), each of which lacked a date of accumulation.
- f. Failed to label each container of hazardous waste with the words "Hazardous Waste" and a description of its contents, such as the chemical name, as required by section 22a-449(c)-102(a)(2)(J) of the RCSA incorporating 40 CFR 262.34(a)(3) with specified changes. At the time of the inspection, there were twelve, one-gallon plastic containers of flammable lab wastes in the flammables storage room (Tower Building, second floor, room #21502) which were marked with the word "waste", but lacked the word "hazardous" and a description of their contents.
- g. Failed to provide an impervious base and secondary containment in an area used for the storage of hazardous waste containers, as required by section 22a-449(c)-102(a)(2)(E) of the RCSA incorporating 40 CFR 262.34(a)(1)(i) and 40 CFR 264.175(b)(1) and (b)(3). This applies to the hazardous waste container storage area located in room #21502 on the second floor

of the Tower Building. The concrete floor was uncoated and no secondary containment was being provided.

- h. Failed to include all required information in the weekly hazardous waste container storage area inspection log, as required by section 22a-449(c)-102(b)(2) of the RCSA incorporating 40 CFR 265.15(d). The weekly inspection log for the hazardous waste container storage area located in the Tower Building only had entries for the name of the inspector, the date of the inspection, the time of the inspection, and container condition.
- i. Failed to record weekly inspections of hazardous waste container storage areas in a log or summary, as required by section 22a-449(c)-102(b)(2) of the RCSA incorporating 40 CFR 265.15(d). During the December 2011 inspection, the WEED inspector found that there were several gaps in the weekly inspection logs for the hazardous waste container storage area located in room #6426 on the fourth floor of the North Building. Specifically, there were no weekly inspection logs available for review for the weeks of February 25, 2011 and May 11, 2011, and from July 29, 2011 until September 2, 2011. In addition, the last weekly inspection log available for review for the hazardous waste container storage area located in room #21502 on the second floor of the Tower Building was completed on May 14, 2010.
- j. Failed to conduct inspections of safety and emergency equipment at least monthly, as required by section 22a-449(c)-102(b)(2) of the RCSA incorporating 40 CFR 265.15(b)(4) with changes specified in section 22a-449(c)-105(a)(2)(G) of the RCSA. At the time of the inspection, inspections of the safety and emergency equipment located on the second floor in room #21502 of the Tower Building were not being conducted.
- k. Failed to include all required information in the contingency plan, as required by section 22a-449(c)-102(a)(1) of the RCSA incorporating 40 CFR 262.34(a)(4) which requires compliance with 40 CFR 265.52(d). The contingency plan lacked the home addresses and home telephone numbers of the emergency coordinators.
- l. Failed to include all required information in the contingency plan, as required by section 22a-449(c)-102(a)(1) of the RCSA incorporating 40 CFR 262.34(a)(4) which requires compliance with 40 CFR 265.52(e). The contingency plan lacked a list, the location(s) and a discussion of the capabilities of the safety and emergency equipment.
- m. Offered hazardous waste to a transporter that did not have a current, valid transporter permit issued by the Commissioner pursuant to section 22a-449(c)-11 of the RCSA or section 22a-454 of the Connecticut General Statutes, as required by section 22a-449(c)-102(b)(1) of the RCSA. Pharmaceuticals at or near expiration, some of which were characteristic and/or "P" or "U" listed hazardous wastes, were being shipped to EXP Pharmaceutical Services Corporation using United Parcel Service, which was not a permitted hazardous waste transporter. Recalled pharmaceuticals, some of which may have been hazardous wastes,

were being shipped to Cardinal Health. During the December 2011 inspection, there was no documentation demonstrating that hazardous waste pharmaceuticals were being shipped to Cardinal Health using a permitted hazardous waste transporter.

- n. Offered hazardous waste to a transporter that had not received an EPA identification number, as required by section 22a-449(c)-102(a)(1) of the RCSA incorporating 40 CFR 262.12(c). Pharmaceuticals at or near expiration, some of which were characteristic and/or "P" or "U" listed hazardous wastes, were being shipped to EXP Pharmaceutical Services Corporation using United Parcel Service, which had not received an EPA identification number for transporting hazardous waste. Recalled pharmaceuticals, some of which may have been hazardous wastes, were being shipped to Cardinal Health. There was no documentation demonstrating that hazardous waste pharmaceuticals were being shipped to Cardinal Health using a hazardous waste transporter that had obtained an EPA identification number.
 - o. Failed to offer hazardous waste to a treatment, storage or disposal facility which had received an EPA identification number, as required by section 22a-449(c)-102(a)(1) of the RCSA incorporating 40 CFR 262.12(c). Pharmaceuticals at or near expiration, some of which were characteristic and/or "P" or "U" listed hazardous wastes, were being shipped to EXP Pharmaceutical Services Corporation located in Fremont, California, which had only notified as a large quantity generator of hazardous waste. EXP also has facilities located in Hayward and Union City, California. These referenced facilities had only notified as small quantity generators of hazardous waste. The recalled pharmaceuticals, some of which may have been hazardous wastes, were being shipped to Cardinal Health. Cardinal Health facilities located in Ohio had only notified as generators of hazardous waste.
- 4. Based on information Respondent submitted to WEED dated January 4, 2012, Respondent has corrected the violation cited in subparagraph A.3.k. of this consent order as of Respondent's submittal.
 - 5. On March 8, 2012, WEED issued Notice of Violation no. WSWDH12032 to Respondent requiring correction of the violations listed in subparagraphs A.3.a. through A.3.j. and A.3.i. through A.3.o. of this consent order.
 - 6. By virtue of the above, Respondent has violated Connecticut's hazardous waste management regulations, sections 22a-449(c)-100 through 119 of the RCSA, incorporating 40 CFR Parts 260 through 279.
 - 7. By agreeing to the issuance of this consent order, Respondent makes no admission of fact or law with respect to the matters addressed herein, other than the facts asserted in paragraphs A.1. and A.2.above.

B. With the agreement of Respondent, the Commissioner, acting under sections 22a-6, 22a-131 and 22a-449 of the Connecticut General Statutes ("CGS"), orders Respondent as follows:

1. Compliance. Respondent shall correct all violations identified in subparagraphs A.3.a. through A.3.o. above and shall maintain its compliance with all applicable provisions of Connecticut's hazardous waste management regulations, RCSA sections 22a-449(c)-100 through 119, including but not limited to those regulations applicable to generators of hazardous waste identified in paragraph A.3. above. In particular:
 - a. On or before thirty (30) days after the date of issuance of this consent order, Respondent shall retain one or more qualified consultants acceptable to the Commissioner to prepare the documents and implement or oversee the actions required by this consent order and shall, by that date, notify the Commissioner in writing of the identity of such consultant(s). Respondent shall retain one or more qualified consultants acceptable to the Commissioner until this consent order is fully complied with, and within ten (10) days after retaining any consultant other than the one originally identified under this paragraph, Respondent shall notify the Commissioner in writing of the identity of such other consultant. The consultant(s) retained to prepare the documents and implement or oversee the actions required to achieve compliance with this consent order shall be a qualified professional engineer licensed to practice in Connecticut or Certified Hazardous Materials Manager ("CHMM") with qualifications acceptable to the Commissioner. Respondent shall submit to the Commissioner a description of a consultant's education, experience and training which is relevant to the work required by this consent order within ten (10) days after a request for such a description. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.
 - b. Respondent shall perform all actions which it failed to perform as specified in subparagraphs A.3.a. through A.3.j. and A.3.l. through A.3.o. of this consent order.
 - c. Respondent shall conduct a comprehensive recycling review of The Danbury Hospital to evaluate compliance with Connecticut's recycling laws set forth in section 22a-241b(d) of the CGS and section 241b-2(1) of the RCSA. On or before ninety (90) days after the date of issuance of this consent order, Respondent shall submit for the review and written approval of the Commissioner a business recycling profile documenting the management of recyclable materials. An example profile is included as Attachment A to this consent order.
 - d. On or before one hundred and twenty (120) days after the date of issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a comprehensive plan which details the actions and/or operational changes it has undertaken or will undertake to ensure future compliance with the Connecticut hazardous waste management regulations including, but not limited to, those set forth in paragraph A.3. of this consent order. The plan shall address, among other things, hazardous waste determinations, preparation of manifests, container management, inspection procedures, record keeping, contingency planning, hazardous waste transportation, and hazardous waste disposal. Within five (5) days after the Commissioner approves such plan, Respondent shall carry out the plan and maintain it in full effect thereafter.

2. Status of Notice of Violation No. WSWDH12032. This consent order supersedes Notice of Violation No. WSWDH12032.
3. Civil penalty. Respondent shall pay a penalty of forty-one thousand, eight hundred and fifty-five dollars (\$41,855.00) as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraph A.3. of this consent order. The penalty shall be paid in two separate installments as follows:
 - a. The first installment shall be in the amount of twenty thousand, nine hundred and twenty-eight dollars (\$20,928.00) and shall be due and payable on or before fourteen (14) days after the date of issuance of this consent order.
 - b. The second installment shall be in the amount of twenty thousand, nine hundred and twenty-seven dollars (\$20,927.00) and shall be due and payable on or before one hundred and twenty (120) days after the date of issuance of this consent order.
4. Supplemental Environmental Project(s). In lieu of making a portion of the civil penalty payment prescribed in paragraph B.3. above, Respondent may comply with the following requirements regarding Supplement Environmental Projects ("SEPs") and/or pay additional civil penalties.
 - a. Within sixty (60) days after the date of issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a proposal to perform one or more SEPs ("proposal"). The proposal shall include: a description of the SEP(s), an explanation as to why the particular SEP(s) is (are) being proposed, a schedule for implementation and completion of the SEP(s), itemized costs to be incurred by Respondent in carrying out the SEP(s) and a description of the benefit(s) of the SEP(s) to the general public or the environment. Respondent shall be credited up to twenty thousand, nine hundred and twenty-seven dollars (\$20,927.00) to partially fund an (the) SEP(s).
 - b. The Commissioner will either (i) approve the proposal, including in such approval the dollar amount of the penalty offset to be realized by Respondent attributable to the SEP(s) and any additional conditions deemed necessary by the Commissioner, or (ii) disapprove the proposal and notify Respondent, in writing, of deficiencies in the proposal and any additional actions or information required to be taken or supplied by Respondent. The decision to approve or disapprove an SEP shall be in the sole discretion of the Commissioner.
 - c. If the Commissioner approves Respondent's proposal and Respondent fails to fully perform any approved SEP within the timeframe specified in the proposal, Respondent shall immediately notify the Commissioner in writing of such noncompliance and shall, upon written request by the Commissioner, remit a payment equal to the total estimated cost, as determined by the Commissioner, of all such SEP(s) plus ten (10) per cent of such total estimated cost. Within fourteen (14) days after the date of the Commissioner's written request, Respondent shall make such payment in accordance with the remittance procedures for unexpended SEP funds in subparagraph B.4.h. of this consent order. Respondent shall not be given any credit or reduction in the civil penalty provided for by this paragraph if an SEP included in an approved proposal is not fully complied with.

- d. The net present after-tax value of the SEP(s) shall be equivalent to the sums identified in this paragraph, or Respondent shall submit certified documentation that no tax credits shall be obtained as a result of the SEP(s) performed under this paragraph.
 - e. If and when Respondent disseminates any publicity, including but not limited to any press releases regarding funding an SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
 - f. Respondent shall not claim or represent that any SEP payment made pursuant to this consent order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and Respondent shall not seek or obtain any other benefit such as a tax credit as a result of the payment under this paragraph.
 - g. Within thirty (30) days after the completion of each SEP, Respondent shall submit for the Commissioner's review and written approval a comprehensive final report that certifies completion of the SEP. Each such final report shall include, at a minimum, a narrative history of the project, detailed explanation of its design and implementation, summary of any data collected, complete final accounting of actual project costs including receipts for out-of-pocket costs, and a discussion of environmental benefits resulting from the SEP.
 - h. Should the Commissioner determine that the actual cost to Respondent in completing an SEP is less than the estimated cost identified in the proposal approved by the Commissioner in accordance with subparagraph B.4.b. above, Respondent shall pay the difference between such actual and estimated cost to the Commissioner as unexpended SEP funds. The Commissioner shall notify Respondent in writing of the amount of any such unexpended SEP funds which are due. Respondent shall, within fourteen days after the date of such written notice, remit the full amount of the unexpended SEP funds. Payment of unexpended SEP funds shall be by certified or bank check payable to "Treasurer, State of Connecticut." The check shall state in the memo notation "Statewide SEP Account" and the consent order number identified at the top of page one of this consent order. Respondent shall mail or personally deliver such payment to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127. Copies of the check and any transmittal letter shall also be sent to Ms. Julie Dutton in the Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division, at the same address.
5. Payment of penalties. Payment of penalties under paragraph B.3. of this consent order shall be mailed or personally delivered to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to "Treasurer, State of Connecticut." The check shall state in the memo notation, "Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division civil penalty" and the consent order number identified at the top of page one of this consent order. Copies of the check and any transmittal letter shall also be sent to Ms. Julie Dutton in the Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division, at the same address.

6. Sampling and sample analyses. All sample analyses which are required by this consent order shall be conducted by a laboratory certified by the Connecticut Department of Public Health to conduct such analyses. All sampling and sample analyses performed under this consent order shall be performed in accordance with procedures specified or approved in writing by the Commissioner, or, if no such procedures have been specified or approved, in accordance with EPA document SW-846. Unless otherwise specified by the Commissioner in writing, the value of each parameter shall be reported to the maximum level of precision and accuracy specified in the applicable protocol, and if no such level is specified, to the maximum level of precision and accuracy possible.
7. Approvals. Respondent shall use best efforts to submit to the Commissioner all documents required by this consent order in a complete and approvable form. If the Commissioner notifies Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within 30 days of the Commissioner's notice of deficiencies. In approving any document or other action under this consent order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this consent order. Nothing in this paragraph shall excuse noncompliance or delay.
8. Full Compliance. Respondent shall not be considered in full compliance with this consent order until all actions required by this consent order have been completed as approved and to the Commissioner's satisfaction.
9. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.
10. Dates. The date of "issuance" of this consent order is the date the consent order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this consent order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this consent order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this consent order, the word "day" as used in this consent order means calendar day. Any document or action which is required by this consent order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.
11. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this consent order shall be signed by Respondent or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in section 22a-430-3(b)(2) of the RCSA, and by the individual(s) responsible for actually preparing such document, and Respondent or Respondent's chief executive officer and each such individual shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information is punishable as a criminal offense under section 53a-157b of the CGS and any other applicable law."

12. Noncompliance. This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this consent order may subject Respondent to an injunction and penalties.
13. False statements. Any false statement in any information submitted pursuant to this consent order is punishable as a criminal offense under section 53a-157b of the CGS and any other applicable law.
14. Notice of transfer; liability of Respondent. Until Respondent has fully complied with this consent order, Respondent shall notify the Commissioner in writing no later than fifteen (15) days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this consent order or after obtaining a new mailing or location address. Respondent's obligations under this consent order shall not be affected by the passage of title to any property to any other person or municipality.
15. Commissioner's powers. "Except as provided hereinabove with respect to payment of civil penalties," nothing in this consent order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this consent order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
16. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
17. No assurance by Commissioner. No provision of this consent order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this consent order will result in compliance.
18. Access to site. Any representative of the Department of Energy and Environmental Protection may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
19. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons or municipalities that are not parties to this consent order.

20. Notice to Commissioner of changes. Within fifteen (15) days of the date Respondent becomes aware of a change in any information submitted to the Commissioner under this consent order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondent shall submit the correct or omitted information to the Commissioner.

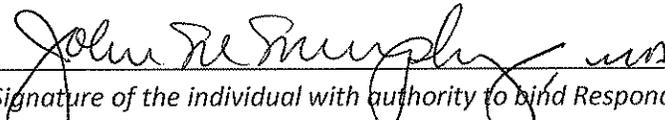
21. Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this consent order or of any document required hereunder, Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.

22. Submission of documents. Any document required to be submitted to the Commissioner under this consent order shall, unless otherwise specified in this consent order or in writing by the Commissioner, be directed to:

Ms. Michele DiNoia
Department of Energy and Environmental Protection
Bureau of Materials Management and Compliance Assurance
Waste Engineering and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

Respondent consents to the issuance of this consent order without further notice. "The undersigned certifies that he/she is fully authorized to enter into this consent order and to legally bind the Respondent to the terms and conditions of the consent order."

The Danbury Hospital

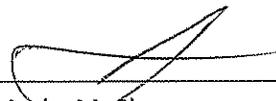
BY: 
(Signature of the individual with authority to bind Respondent to terms of consent order)

JOHN M. MURPHY
Name (typed)

CEO
Title

8/27/12
Date

Entered as a final order of the Commissioner of the Department of Energy and Environmental Protection.


Macky McCleary
Deputy Commissioner

9/11/12
Date

Consent Order No. WSWDH12009

Attachment A – Example Business Recycling Profile