

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations  
of the Environmental Conservation  
Law ("ECL") Article 17

**ORDER ON CONSENT**

-by-

File No. R4-2009-0805-128

Village of Sidney

Respondent

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WHEREAS:

1. The Department has jurisdiction in all matters pertaining to the protection of the water quality of the State pursuant to ECL Article 17.
2. Respondent, Village of Sidney, owns and operates a wastewater treatment plant ("WWTP") serving the Village and commercial/industrial properties within the Village sewer district, including the Amphenol facility. The WWTP is permitted for the treatment of domestic wastewater and its outfall discharges to the Class B waters of the Susquehanna River. Respondent has a State Pollutant Discharge Elimination System ("SPDES") permit (No. NY0029271) ("permit").
3. In May of 2008, Respondent embarked on an effort to clean all municipal sanitary sewer lines in 2008, which included the cleaning of the Village's sanitary sewer line that runs underneath the Amphenol facility.
4. In June of 2008, Respondent conducted comprehensive sampling of its treated wastewater effluent in connection with a Department-initiated modification of its SPDES permit. Polychlorinated biphenyls ("PCBs") were found to be present in excess of water quality standards.
5. Respondent started sampling of PCBs within the collection system to narrow down the source of the PCB contamination. The cogener of PCBs identified is that used at the Amphenol facility during the 1960s and that industrial area was the focus of the investigation. Sample results identified that "upstream" of the Amphenol facility, no PCBs were detected in the sewers, and "downstream" PCBs were detected.
6. The Department and Amphenol Corporation entered into a remedial Order on Consent (#04-0312-85-06MI) to investigate and eliminate the discharge of PCBs from their facility via the Respondent's collection system and discharge outfall. The Schedule of Compliance from that Order requires Amphenol to clean up the PCBs both at the Respondent's WWTP and onsite at Amphenol. Amphenol has 5 months from the date of execution of the Order to clean up the

PCBs, after which they must submit a report to the Department evaluating the effectiveness of the actions. If Amphenol is not successful in eliminating the PCBs to an undetectable level, they must provide a plan and schedule of further actions to bring the PCB levels to nondetect.

7. It is preferable to the Department that the PCBs be eliminated at the source rather than to have Amphenol continue to discharge them to the public sewer for treatment at the Respondent's POTW. Accordingly, an interim limit for the discharge of PCBs is necessary to allow flexibility to the Village and Amphenol to effectively eliminate the PCBs. The use of this interim limit during the period is necessary until the PCBs can be eliminated and will not cause a significant adverse effect on the environment.

8. ECL § 17-0507 prohibits increasing or altering the content of the wastes discharged through an outlet or point source into the waters of the state by a change in volume or physical, chemical, or biological characteristics without a SPDES permit to do so as provided by section 17-0701. ECL § 17-0701 states, it shall be unlawful for any person, until a written SPDES permit therefor has been granted by the commissioner to make or cause to make or use any outlet or point source for the discharge of sewage, industrial waste or other wastes or the effluent therefrom, into the waters of the state..."

9. ECL §17-0511 states that "the use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article."

10. The discharge of PCBs via the collection system and the Respondent's outfall is a violation of ECL § 17-0507 and § 17-0511.

11. ECL Section 71-1929 provides that any person who violates any provision of Titles 1 through 11 inclusive and title 19 of Article 17 of the ECL or any rule or regulation, order or determination of the Commissioner promulgated thereunder shall be liable for a civil penalty of up to thirty seven thousand five dollars (\$37,500). Injunctive relief is also available.

12. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for them.

II. 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.

III. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, his directors, officers, employees, servants, agents, successors or assigns.

IV. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

V. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VI. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VII. All communications except where otherwise specifically directed should be sent to:

For Department:  
Regional Water Engineer  
New York State Department  
of Environmental Conservation  
Region 4  
1130 N. Westcott Road  
Schenectady, New York 12306

VIII. This Order is deemed effective on the date signed by the Department.

IX. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, their agents, their servants, their employees, their successors and their assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims,

actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

X. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations in this Order.

DATED: \_\_\_\_\_, 2009  
Rotterdam, New York

Alexander B. Grannis  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

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

CONSENT BY RESPONDENT  
Village of Sidney

Respondent hereby consents to the issuing and entering of this Order, waives their right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

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

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a Notary Public in and for the State, personally appeared \_\_\_\_\_, 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.

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

## SCHEDULE OF COMPLIANCE

1. Respondent shall coordinate with and allow access to Village property as needed by Amphenol Corporation to complete the cleanup and/or elimination of the PCBs from the collection system.
2. An interim limit of monitor only for PCBs shall apply until all actions required under the Department's Order on Consent with Amphenol Corporation (#R4-0312-85-06M1) are completed. All other effluent limitations shall remain as specified in the SPDES permit.