

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of  
Violations of Environmental Conservation Law,  
Article 19 by:

**Order on Consent**  
File No. R4-2008-0530-78

Capital District By-Products Inc.  
682 Mariaville Rd.  
Schenectady, New York 12306

Respondent.

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WHEREAS:

Jurisdiction

1. New York State Department of Environmental Conservation ("Department") has administrative jurisdiction to safeguard the air resources of the State pursuant to ECL Article 19.

Facts

2. Respondent, Capital District By-Products Inc., is located at 682 Mariaville Road in Schenectady, New York ("facility").

3. Department staff inspected the facility on May 21, 2008 ("inspection") and found that the facility manufactures animal bedding.

4. The facility operates air contamination emission control devices ("cyclones").

Unpermitted Facility

5. Regulations at 6 NYCRR 201-1.2 (a) require facilities which emit air contaminants to obtain a permit.

6. The facility emits volatile organic compounds ("VOCs") and particulate matter from sawdust burning and woodchip drying as part of its production process.

7. Respondent does not have a permit/registration for its VOC/particulate matter emissions.

8. Respondent violated 6 NYCRR 201-1.2(a) by failing to have a permit for its non-exempt emissions.

### Violation of Opacity Standard

9. Regulations at 6 NYCRR 212.6 require that “no person will cause or allow emissions having an average opacity during any six consecutive minutes of 20 percent or greater from any process emission source, except only the emission of uncombined water.”

10. Department staff observed at the time of the inspection, smoke emissions being discharged from the top of the cyclone.

11. During the inspection, Department staff took visual emission observations in accordance with EPA Reference Method 9. An average opacity of 45.83 % for one six minute observation was recorded along with several other exceedances.

12. Respondent violated 6 NYCRR 212.6 by exceeding its opacity limit.

### Civil Penalty

13. ECL Section 71-2103(1) provides that: “Except as provided in section 71-2113, any person who violates any provision of Article Nineteen or any code, rule or regulation which was promulgated pursuant thereto;... shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In the case of a second or any further violation, the liability shall be for a penalty not to exceed twenty-two thousand five hundred dollars for said violation and an additional penalty not to exceed twenty-two thousand five hundred dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”

### Waiver of Hearing

14. 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 the terms, provisions and conditions contained herein.

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

I. With respect of the aforesaid alleged violations, a civil penalty in the amount of SIX THOUSAND DOLLARS (\$6,000) of which TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) 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 (\$3,500) 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. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. 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.

IV. 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, its directors, officers, employees, servants, agents, successors or assigns.

V. 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.

VI. 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.

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

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

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

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

X. 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, its agents, its servants, its employees, its successors and its 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.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

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

DATED: \_\_\_\_\_, 2008  
Rotterdam, New York

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

BY:

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

CONSENT BY RESPONDENT

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

Capital District By-Products Inc.

SIGNED: \_\_\_\_\_

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

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

STATE OF NEW YORK )

) ss.:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2008, before me, the undersigned,

personally appeared \_\_\_\_\_,  
*(Full name)*

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

\_\_\_\_\_  
*(Full mailing address)*

and that he/she/they is (are ) the \_\_\_\_\_  
*(President or other officer or director or attorney in fact duly appointed)*

of the \_\_\_\_\_,  
*(Full legal name of corporation)*

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public, State of New York

## SCHEDULE OF COMPLIANCE

1. Within 30 days of receipt of this Order, Respondent shall submit to the Department, a registration application pursuant to regulations at 6 NYCRR 201-1.2. The application shall include all air emissions sources, emission points, calculations of potential and actual emissions, and a list of all exempted activities at the facility.
2. Within 60 days of the effective date of this Order, Respondent shall submit to the Department, a corrective action plan to control emissions from the facility. The corrective action plan will limit opacity to below 20 percent as stated in 6 NYCRR 212.6. The plan shall include but not be limited to a daily log as discussed in item #4 below.
3. Within 60 days of approval from the Department, Respondent shall implement the corrective action plan.
4. Respondent must maintain a daily log on site, which serves to monitor facility parameters, for one year from the effective date of this Order.