

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

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

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Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 2675

March 20, 2014

Kevin M. Bernstein, Esq.
Bond, Schoeneck & King
110 West Fayette Street
One Lincoln Center
Syracuse, NY 13202-1355

Re: Order on Consent
R4-2014-0131-17

Dear Mr. Bernstein:

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

This will also acknowledge receipt of \$65,000 the civil penalty pursuant to Paragraph I.

Sincerely,

Richard Ostrov
Regional Attorney
Region 4

Enclosure

cc: R. Leone
J. Quinn
A. Elliott
K. Sarnowicz
L. Winterberger
K. Goertz
D. Spencer
B. Potter
M. Ellis

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of Articles 17, 27
and 40 of the Environmental
Conservation Law of the State of
New York and Title 6 of the Official
Compilation of the Codes, Rules and
Regulations of the State of New York

DEC CASE NO.
R4-2014-0131-17

ORDER ON CONSENT

SI Group, Inc.
1000 Main Street
Rotterdam Junction, New York

Respondent.

Jurisdiction

1. The New York State Department of Environmental Conservation (“Department”) has jurisdiction in all matters pertaining to the protection of the water quality of the State pursuant to Environmental Conservation Law (“ECL”) Article 17. The State Pollution Discharge Elimination System (“SPDES”) permit regulations are codified in 6 New York Compilation of Rules and Regulations (“NYCRR”) Part 750.
2. The Department is responsible for regulation of hazardous waste management facilities pursuant to ECL Article 27, Title 9 and regulations in 6 NYCRR Part 373.
3. The Department, pursuant to ECL Article 40, is authorized to regulate the storage and handling of chemicals in the State of New York. The registration, storage and handling of chemical bulk storage are codified in 6 NYCRR Parts 595 through 599.

Respondent

4. Respondent, SI Group, Inc. owns and operates a manufacturing facility for synthetic phenolics resins and alkyl phenols located at 1000 Main Street, Rotterdam Junction, New York (“facility”).
5. Respondent operates a wastewater treatment plant (“WWTP”) at the facility which discharges wastewater pursuant to a State Pollutant Discharge Elimination System (“SPDES”) permit (No. NY0005801).
6. Respondent’s storage of hazardous substances at the facility are subject to the Department’s 6 NYCRR Part 596 “Hazardous Substance Bulk Storage Regulations” (Registration #4-000079)
7. Respondent’s facility is subject the federal Resource Conservation and Recovery Act (“RCRA”) and 6 NYCRR Part 373 (Hazardous Waste Management Facilities) permitting requirements as set forth in permit number (4-4228-00056/00012).

Applicable Regulations

Hazardous Substances

8. Regulations at 6 NYCRR 595.2(a): Prohibition of Releases provides that: “The release of hazardous substance which is required to be reported pursuant to 6NYCRR 595.3(a) is prohibited unless such release is pursuant to a valid state or federal permit or authorization.”
9. Regulations at 6 NYCRR 595.3(a)(2) provides that “All reports of releases must be made to the DEC hotline (800- 457-7362; outside New York State: 518-457-7362) within two hours of the release.”
10. Regulations at 6 NYCRR 595.3(b)(1) and (2) provides that
 - (1) The owner or operator of a storage facility shall notify the Department of a suspected or probable release of a hazardous substance unless an investigation shows that a release has not occurred or does not need to be reported under subdivision (a) of this section. Reports must be made to the DEC hotline within 24 hours of discovery of any of the following conditions:
 - (i) test, sampling, or monitoring results from a release detection method that indicate a release may have occurred;
 - (ii) unusual operating conditions such as the erratic behavior of product dispensing equipment, the sudden loss of product from a storage tank, an unexpected presence of water in a tank, or the physical presence of a hazardous substance or an unusual level of vapors on a site that are of unknown origin;
 - (iii) impacts in the surrounding area, such as evidence of hazardous substances or resulting vapors in soils, basements, sewer and utility lines, and nearby surface waters; or
 - (iv) any other conditions or indications of a suspected release.
 - (2) If within 24 hours of the discovery of a suspected release it is confirmed that a release has not occurred, then such release does not have to be reported.

SPDES

11. Regulations at 6 NYCRR 750-1.4 provides that no person shall “cause a discharge of any pollutant in a manner other than as prescribed by such .permit.”
12. Regulations at 6 NYCRR 750-1.14(f) provides that: “Permits may include and the permittee shall comply with such other terms, provisions, requirements or conditions as may be necessary to meet the requirements of ECL Article 17 and 40 CFR 122 (see section 750-1.24 of this Part) including but not limited to requirements to implement best management practices plans...”
13. Regulations at 6 NYCRR 750-2.5(a) (1) provides that: “The permittee shall comply with all recording, reporting, monitoring and sampling requirements specified in the permit.”

14. Regulations at 6 NYCRR Part 750-2.7(c)(1) requires that: “The permittee shall report, including the same information required to be reported under subdivision (b) of this section, orally to the regional water engineer within 24 hours from the time the permittee becomes aware of any of the following incidents: (1) A discharge of untreated or partially treated sewage that would otherwise be treated, except a discharge due to a properly operating wet weather combined sewer overflow or a discharge in accordance with a department approved plan for managing wastewater and/or stormwater (provided that such plan is in compliance with applicable law and regulation)...

15. Regulations at 6NYCRR 750-2.8(a)(2) requires that the “permittee shall at all times properly operate and maintain all disposal facilities which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes as a minimum, the following:

i. A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

ii. Written procedures for operation and maintenance, training new operators, adequate laboratory controls and appropriate quality assurance.

Hazardous Waste

16. RCRA permit Module 1, General Condition (G) requires that Respondent report all dischargers of hazardous substances above the reportable quantity in 6 NYCRR Part 597 to the Department’s hotline.

SPDES Permit and Regulation Violations

Unpermitted Discharge

17. In September 2013, Respondent during a wastewater treatment maintenance operation discharged untreated wastewater containing phenol that was unauthorized by its SPDES permit in violation of 6 NYCRR 750-1.4.

Failure to Notify

18. Respondent failed to notify the Department within 24hours of the September 2013 discharge of effluent at location unauthorized by its SPDES permit in violation of 6 NYCRR Part 750-2.7(c)(1).

Effluent Limit Violations and Failure to Sample and Test Parameters

19. Respondent reported the following permit effluent limit violations in its monthly discharge monitoring reports (“DMRS”) for Outfall N0. 01A:

Parameter	DMR Report	Limit	Reported Value	No Report (XX) or Number of Reports Not Submitted
1,1,3,3-Tetramethyl Butyl Phenol	9/2012	0.033 lb./day daily max.	0.038 lb/day	
BEHP et als	7/2013			XX
UOD	10/2013	540lb/day (Daily Max.)	975.3lb/day	
Cyanide	10/2013	60 ug/L (Daily Maximum)	120 ug/L	
BOD	11/2013			XX
TSS	11/2013			XX
pH	12/2013			2 Daily

20. Respondent reported the following permit effluent limit violations in its monthly discharge monitoring reports (“DMRS”) for Outfall N0. 001:

Parameter	DMR Report	Limit	Reported Value	No Report or Number of Reports Not Submitted
Cyanide	12/2012	60 ug/L (Daily Maximum)	80 ug/L	
Total Phenols	8/2013			XX
1,1,3,3-Tetramethyl Butyl Phenol	10/2013	0.033 lb./day daily max.	0.125 lb/day	
Total Phenols	11/2013			XX
Temperature	11/2013			XX
Oil, Grease, Settleable Solids	12/2013			1 Weekly

21. Respondent reported the following permit effluent limit violations in its monthly discharge monitoring reports (“DMRS”) for Outfall NO. 002 –Stormwater:

Parameter	DMR Report	Limit	Reported Value	No Report or Number of Reports Not Submitted
Total Phenols	10/2013	10 ug/L (Daily Maximum)	42 ug/L	
Total Phenols	12/2013	10 ug/L (Daily Maximum)	41.9 ug/L	
Visible Foam/Settleable Solids	12/2013			XX
Oil and Grease	12/2013	15 mg/L (Daily Maximum)	28.6 mg/L	

22. Respondent’s exceedences of SPDES permit limits identified in Paragraphs 19-21 are violations of the SPDES permit and 6 NYCRR Part 750-1.4.

23. Respondent’s failure to sample and test SPDES permit limit parameters identified in Paragraphs 19-21 are violations of the SPDES permit and 6 NYCRR 750-2.5(a) (1).

Best Management Practices “BMP” Violations

24. Respondent failed to follow its BMP in violation of SPDES permit and 6 NYCRR 750-1.14(f).

Hazardous Substance Violation

25. Respondent’s failure to notify the Department within two hours of the September 2013 discharge is a violation of 6 NYCRR 595.3(a)(2).

RCRA Permit Violation

26. Respondent's failure to timely report the September 2013 discharge under 6 NYCRR 595.3(a)(2) is also a violation of the RCRA permit Module 1, General Condition (G).

R4-2011-1116-146 Order on Consent Violations

27. Respondent is subject to the Paragraph 1 of the Schedule of Compliance in Order on Consent, R4-2011-1116-146 (effective date 12/20/2011) ("2011 Order") that required Respondent to initially complete its Comprehensive Performance Evaluation ("CPE") by no later than December 31, 2012. The Order was modified on January 17, 2013 to extend the compliance date for completing the CPE and submitting the results to the Department by no later than December 31, 2013. The extension was based on the timing of the Department approval of the CPE, and the added complexity and features of the CPE that weren't contemplated by the parties when the Order was executed. Respondent violated the 2011 Order by failing to complete its CPE by December 31, 2013.

Civil Penalties

28. Regulations at 6 NYCRR 595.4 (a) provide that " For facilities regulated pursuant to Part 596 of this Title, failure to report a release of a reportable quantity of a hazardous substance is punishable by the civil, administrative and criminal penalties set forth in ECL § 71-4303.

29. ECL Section 71-4303 provides that any person on who violates any ...rule or regulation promulgated there under, ... shall be liable in the case of a civil penalty not to exceed twenty-five thousand dollars and an additional penalty of not more than twenty-five thousand dollars for each day during which such violation continues.... and, in addition thereto such person may by similar process be enjoined from continuing such violation.

30. 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 9 of ECL Article 27... and, in addition thereto, such person may by similar process be enjoined from continuing such violation.

31. 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 there under shall be liable for a civil penalty up to thirty seven thousand five hundred dollars (\$37,500). Injunctive relief is also available.

Waiver of Hearing

32. Respondent has affirmatively waived its 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 therein.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

- I. In respect of the aforesaid violations, Respondent is assessed a civil penalty in the amount of SEVENTY FIVE THOUSAND DOLLARS (\$75,000). TEN THOUSAND DOLLARS (\$10,000) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance. The suspended penalty shall be paid within 30 days of receipt of a Notice of Violation setting forth violations of the Schedule of Compliance. SIXTY FIVE THOUSAND DOLLARS (\$65,000) of the civil penalty shall be paid by check made payable to the Department of Environmental Conservation with the return of the signed and notarized Order.
- II. Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.
- III. This Order is binding upon the Respondent, his agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.
- IV. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.
- V. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.
- VI. The effective date of this Order shall be the date upon which it is signed on behalf of the Department.
- VII. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless 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 employees, his servants, his agents, his successors or his assigns.

VIII. 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 there under or permits issued there under;

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, his agents, his servants, his employees, his successors and his 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.

IX. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

1. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

2. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

3. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accepts such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

X. All reports required herein shall be mailed to

DEC Region 4
Attn: Regional Engineer
1130 North Westcott Road
Schenectady, NY 12306

All communications to Respondent shall be mailed to:

SI Group, Inc.
Attn: Margaret Corey
1000 Main Street
Rotterdam Junction, New York 12150

XI. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

XII. This Order shall not create any presumption of law or fact which shall inure to the benefit of any person other than the Department or Respondent.


DATED: March 19, 2014
Rotterdam, New York

Joe Martens
Commissioner
New York State Department of
Environmental Conservation

BY: Eugene J. Kelly
Eugene J. Kelly
Regional Director
Region 4

BY RESPONDENT

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.

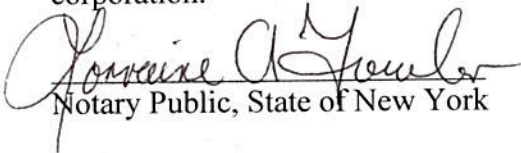
By: 
Title: Senior Vice President
Date: 3/18/2014

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

On the 18th day of March 2014, before me, the undersigned, personally appeared Daniel Paul Gilley, (Full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at 38 Timberwick Drive, Clifton Park, NY 12065
(Full mailing address)

and that he/she/they is (are) the Senior Vice President & officer
(President or other officer or director or attorney in fact duly appointed)

of the SI Group, Inc., 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

LORRAINE A. FOWLER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01FO6209708
Qualified in Greene County
My Commission Expires 8/3/17

SCHEDULE OF COMPLIANCE

Respondent shall:

1. Within 30 days of the effective date of this Order, submit to the Department for review and approval a final and complete report prepared by a Professional Engineer licensed to practice in New York State evaluating the reasons for the discharge at the WWTP in September 2013 based on information available. The report shall identify the contributing factors and appropriate outstanding corrective action(s) taken since the incident. The corrective action plan may include engineering controls. Implementation of the approved corrective actions shall be completed within 30 days of Department approval.

2. Within 15 days of the effective date of this Order, submit a plan to the Department that identifies all outstanding work related to the CPE and a schedule to complete the CPE by July 1, 2014. Once approved by Department, the plan and schedule will become enforceable under the terms of this Order.

3. Within 45 days of the effective date of this Order, submit a revised Best Management Practices (BMP) plan to the Department for review, which shall include a review of all drainage areas and related stormwater discharges currently occurring at the Rotterdam Junction facility and a review of all materials handling and raw material storage proximate to stormwater collection systems and revision of any related procedures based on that review. The BMP Plan revision shall be performed by a third party professional (CPESC) or Professional Engineer licensed to practice in New York State and shall identify any additional field work, related sampling/analysis, or infrastructure improvements to be performed. All additional field work and related sampling/analysis, and report preparation shall be completed during Calendar Year 2014. Any infrastructure improvements recommended as a result of the additional field work and sampling/analysis shall be submitted to the Department with a schedule for approval. Once approved by Department, the plan and schedule will become enforceable under the terms of this Order.