

New York State Department of Environmental Conservation
Office of General Counsel, 14th Floor
625 Broadway, Albany, New York 12233-1500
FAX: (518) 402-9018 or (518) 402-9019
Website: www.dec.ny.gov



Alexander B. Grannis
Commissioner

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AUG 20 2008

BUR. OF HAZARDOUS WASTE REGULATION
DIVISION OF SOLID & HAZARDOUS MATERIALS

**CERTIFIED MAIL/
RETURN RECEIPT REQUESTED**

August 18, 2008

Douglas Cohen, Esq.
Brown Rudnick Berlack Israels
City Place I, 38th Floor
185 Asylum Street
Hartford, CT 06103

Re: Chemical Pollution Control, Inc. of New York
DEC Case No.: CO 1-20070730-1

Dear Mr. Cohen:

Enclosed please find a copy of the fully executed Consent Order in this matter.

Please also note that the penalty imposed under the Order is due within thirty (30) days of the effective date of the Order which is August 14, 2008.

Thank you.

Very truly yours,

Jennifer Hairie
Bureau Chief

Enclosure

Cc: Katy Murphy - Region 1
Juzer Rasani (Albany, 9th Floor)

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of the Environmental Conservation Law ("ECL") 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 ("6 NYCRR") by:

**ORDER ON
CONSENT**

Case No:
CO 1-20070730-1

Chemical Pollution Control, Inc. of New York,
Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 9 of the Environmental Conservation Law ("ECL") and the hazardous waste management rules and regulations promulgated thereunder and codified at 6 NYCRR Part 370 et seq. This order is issued pursuant to the Department's enforcement authority under Article 71 of the ECL.
2. Chemical Pollution Control, Inc. of New York ("Respondent") is a New York domestic business corporation with its principal executive office located at 5151 San Felipe Street, Suite 1600, Houston, Texas, 77056.
3. Respondent is a wholly-owned subsidiary of Philip Services Corporation of 5151 San Felipe Street, Suite 1600, Houston, Texas, 77056.
4. Respondent does business in New York State at 120 South 4th Street, Bay Shore, New York, 11706, and/or owns and/or operates a facility located at 120 South 4th Street, Bay Shore, New York, 11706 (the "Facility").
5. The Facility is a commercial hazardous waste storage facility, with EPA ID No. NYD082785429.
6. Respondent conducts operations at the facility which cause the generation of hazardous waste as defined in ECL 27-0901(3) and Title 6 of the Codes, Rules and Regulations of the State of

New York ("6 NYCRR") Part 371.

7. Respondent is subject to New York State laws and regulations governing hazardous waste, specifically Article 27 of the ECL and the regulations promulgated thereunder.

8. On February 13, 1997, the Department issued a permit to Respondent under 6 NYCRR Part 373 for the operation of the Facility ("the Permit" and/or "Part 373 Permit").

9. The Permit was renewed on July 10, 2006, (NYSDEC Permit No. 1-4728-00086/00002), and the Permit will expire on July 9, 2011.

10. On December 18 and 19, 2006, and January 3, 2007, authorized employees of the Department conducted an inspection ("the Inspection") of the Facility in order to identify possible violations of New York's laws and regulations pertaining to hazardous waste, and/or violations of conditions set forth in the Permit.

11. At the inspection, Department staff documented the following violations of the Permit conditions, statutes and/or regulations of ECL Article 27 and/or 6 NYCRR Part 373:

- a) Part 373 Permit, Module III Condition C/373-2.9(b) – Respondent failed to ensure that waste containers are in good condition. These violations pertain to four 1- cubic yard boxes of sludge leaking onto the pavement.
- b) Part 373 Permit, Module III Condition E(3)/373-2.9(d)(3) – Respondent failed to mark containers, "Hazardous Waste" and with other words that identify the contents in the storage area. This violation pertains to one 30-gallon, five 15-gallon and one 55-gallon containers in WA-II area and one 55-gallon container in SC-2 area.
- c) 6 NYCRR 372.2(a)(8)(ii)/376.5(a)(1)(ii)(a) – Respondent failed to place accumulation dates on containers in storage area. This violation pertains to two 55-gallon, one 30-gallon and five 15-gallon containers in WA-II area, one 55-gallon container in SC-2 area, four 5-gallon containers of D008 in SC-3 area, two 55-gallon and one 5-gallon containers of D001 in WA-I area, one 5-gallon, one 15-gallon, one

55-gallon containers and one-cubic yard box in FS-1 area.

- d) Part 373 Permit, Attachment VIII Condition 4.2 (page 483)/373-2.9(d)(1) – Respondent failed to close containers in storage area. These violations pertain to ten 30-gallon D011 and nine 15-gallon D011 containers in WA-II area.
- e) Part 373 Permit, Module III Condition A/ Module III Condition H-3 (page 067)/373-2.9(h)(3) – Respondent failed to ensure that containers holding hazardous waste that is incompatible with any waste or other materials stored nearby in other containers are separated from other materials. These violations pertain to five 55-gallon containers of D002 (sulfuric acid) stored in WA-II immediately adjacent to one 30-gallon container of P030 (sodium cyanide).
- f) 6 NYCRR 373-2.2(h)(4)(i)&(ii) – Respondent failed to ensure that personnel training records contained correct job titles and job descriptions.
- g) 6 NYCRR 373-2.2(h)(5) – Respondent failed to ensure that all personnel training records were available for inspection.
- h) Part 373 Permit, Module III Condition A – Respondent failed to store containers holding hazardous waste in an authorized permitted storage area. This violation pertains to fifteen 55-gallon containers of D007 (chromide powder), three 55-gallon containers of D007 (chrome aluminum powder), five 1-cubic yard boxes of F006, four 1-cubic yard boxes of D007 and one 1-cubic yard box of universal waste were, stored in an area outside of SC-1 to SC-7 not authorized by the permit.
- i) Part 373 Permit, Attachment VIII Condition H4.6 (page 488) – Respondent failed to stack the Intermediate Bulk Containers (IBC's) over IBC's. Also, fiberboard IBC's that are stored in FS-1 and SC-1 through SC-7 are not covered so as to prevent contact with precipitation.
- j) Part 373 Permit, Attachment II Table B-1 (page 260) – Respondent failed to inspect the loading area daily. This violation pertains to the loading area LA-2.
- k) Part 373 Permit, Attachment I, Item A2.2.3 (Page 098) – Respondent failed to perform an additional compatibility test prior to consolidation of the waste, and failed to perform a screening test on free liquid, cyanide and sulfide.
- l) Part 373 Permit, Attachment VIII, Table H-3, Note No. 3 (page 503) – Respondent

failed to perform paint filter test on IBC's (F006 sludge).

m) Part 373 Permit, Attachment X (page 595)/373-2.28(a)(4) – Respondent failed to mark each piece of equipment covered under the air emission standard.

12. Respondent admits that the allegations made in Paragraph 11 (a) through 11(m), above, can be proven by Department staff, and, in an effort to resolve the claims against it, waives its right to a hearing or to otherwise contest the Department's allegations, consents to the issuance of this Order and agrees to be bound by its terms.

NOW, THEREFORE, HAVING CONSIDERED THIS MATTER AND BEING DULY ADVISED, IT IS ORDERED THAT:

I. **CIVIL PENALTY**

Respondent shall pay a penalty for the cited violations in the amount of \$100,000.00 which amount Respondent shall pay within thirty (30) days of the effective date of this Order. Payment shall be by check payable to the Department of Environmental Conservation and shall be sent to the attention of Jennifer L. Hairie, Esq., Office of General Counsel, 625 Broadway, 14th Floor, Albany, N.Y. 12233-1500.

II. **COMPLIANCE ACTIONS**

Within 30 days of the effective date of this Order, Respondent shall correct the violations that are the subject of this Order.

III. **MONITOR POSITION**

Respondent agrees to demonstrate its commitment to compliance by funding a quarter-time Environmental Monitor position in accordance with the terms set forth in Appendix A.

IV. **SETTLEMENT and RESERVATION OF RIGHTS**

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in this Order against Respondent and its successors (including successors in title) and assigns, and in no way constitutes a

waiver by the Department or of the Commissioner or the Commissioner's designee to enforcement of other consent orders or permits held by Respondent.

B. Except as provided in Subparagraph IV.A. of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or the Commissioner's designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

V. **ACCESS**

For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

VI. **FORCE MAJEURE**

If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within seven days after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement. Respondent shall have the burden of proving by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure Event; that the duration of the delay or the extension sought was or will be warranted under the circumstances; that best efforts were exercised to avoid and mitigate the effects of the delay; and that Respondent complied with the requirements of this Paragraph regarding timely notification to the Department of the Force Majeure Event.

VII. **DURATION**

This Order shall take effect when it is signed by the Deputy Commissioner, as the authorized representative of the Commissioner of Environmental Conservation, and shall terminate upon the Department's written determination that Respondent has completed all obligations contained in this Order ("Termination Notice"). Respondent may request, upon Respondent's good faith belief that it has fully complied with its obligations under this Order, that the Department issue a Termination Notice.

VIII. **FAILURE, DEFAULT AND VIOLATION OF ORDER**

A. Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.

B. Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to Respondent by the Department.

C. Any violation of terms or conditions of this Order shall result in a penalty of ONE THOUSAND DOLLARS (\$1,000.00) per day, per violation.

IX. **INDEMNIFICATION**

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for those 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 of this Order by Respondent and its successors (including successors in title) or assigns, except for those damages arising from the negligence, gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Order.

X. **BINDING EFFECT**

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

XI. **MODIFICATION**

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.

XII. **COMMUNICATIONS**

All written communications required by this Order to the Department shall be transmitted by United States Postal Service, by private courier service, or by hand delivery to:

Office of General Counsel
Attn: Hazardous Waste Compliance Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-5500

Regional Solid/Hazardous Waste Engineer
New York State Department of Environmental Conservation
SUNY @ Stony Brook
50 Circle Road
Stony Brook, NY 11790-3409

Any notices or written communications to Respondent concerning the terms of this Order shall be transmitted by United States Postal Service, by private courier service, or by hand delivery to:

Chemical Pollution Control, Inc.
Facility Manager
120 South 4th Street
Bay Shore, NY 11706

Douglas Cohen, Esq.
Brown Rudnick Berlack Israels LLP
185 Asylan Street -- 38th Floor
Hartford, CT 06105

XIII. **ENTIRE ORDER**

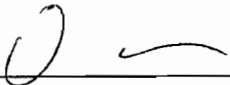
The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified in this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph XI. of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

XIV. **EFFECTIVE DATE**

The effective date of this Order is the date that the Commissioner or the Commissioner's designee signs it. The Department will provide Respondent (or the Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or the Commissioner's designee signs it.

DATED: Albany, New York August 14, 2008

ALEXANDER B. GRANNIS
Commissioner
New York State Department of Environmental Conservation

By: 
Val Washington
Deputy Commissioner
New York State Department of Environmental Conservation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering 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.

Chemical Pollution Control, Inc. of New York

By: _____

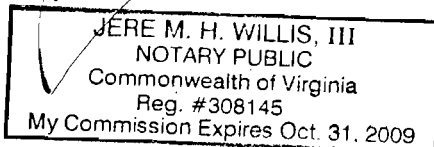
Title: _____

Date: _____

STATE OF NEW YORK)
)
COUNTY OF)

On this 1 day of August, in the year 2008, before me, the undersigned, personally appeared Christopher Dods, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public



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APPENDIX A
ENVIRONMENTAL MONITOR PROVISIONS

A) The Respondent shall fund environmental monitoring services to be performed by the Department. These monitoring services shall include, but not be limited to, the following:

i) oversee activities conducted pursuant to a Departmental Order issued December 19, 2005 pertaining to Respondent (Index No. CO 1-20040831-22) and to this Order (CO 1-20070730-1); and

ii) to monitor and inspect the facility and thereby facilitate Respondent's compliance with applicable environmental requirements.

B) Funds necessary to support the monitoring services and requirements for the coming year shall be provided to the Department by Respondent on an annual basis. The sum to be provided is based on annual Environmental Monitor service costs and is subject to annual revision. Subsequent annual payments shall be made for the duration of this Order or until the monitoring requirement no longer exists, whichever comes first.

C). The Respondent shall be billed annually for each fiscal year beginning on April 1. If this Order is to first become effective subsequent to April 1, the initial payment may be for an amount sufficient to meet the anticipated cost of the monitoring through the end of the current fiscal year.

D) The Department may revise the required payment on an annual basis to include all of the Department's costs associated with the monitoring services. The annual revision may take into account factors such as inflation, salary increases, changes in operating hours and procedures, and the need for additional Environmental Monitors. Upon written request by the Respondent, the Department shall provide the Respondent with a written explanation of the basis for any revision or modification. If such a revision is required, the Department will notify the Respondent of such a revision no later than 60 days in advance of any such revision.

E) Prior to making its annual payment, the Respondent will receive and have an opportunity to review an annual work plan for activities that the Department will undertake pursuant to the Order, during the year.

F) Payments are to be made in advance of the period in which they will be expended, and shall be made within 30 days of receiving a bill from the Department. Payments shall be addressed to:

NYSDEC
Bureau of Revenue Accounting (10th Floor)
625 Broadway
Albany, NY 12233-5012
Attn: Robert Schwank.

G) Failure to make the required payments shall be a violation of this Order. The State reserves all rights to take appropriate action to enforce the above payment provisions.

H) The environmental monitor shall continue to be funded by Respondent until at least one full

year after all planned on-site construction, as provided in Order on Consent CO1-20040831-22, is completed. At such time, provided that the Department has not identified violations that would qualify the facility as a significant non-complier, as defined in the 2003 RCRA Enforcement Response Policy, Department staff, on thirty days written notice, will release Respondent from the requirement to fund an environmental monitor position for the facility.