

NEW YORK STATE: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged
Contravention of Groundwater
Standards by:

ORDER ON
CONSENT

FILE NO.
R3-1518/8805-A

VIRTIS COMPANY, INC.

Respondent.

WHEREAS,

1. New York State Department of Environmental Conservation ("DEC") has enforcement authority for Article 17 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated pursuant thereto.

2. Respondent, Virtis Company, Inc., owns and operates a manufacturing facility located on Route 208 in the Town of Gardiner, Ulster County, New York (the "Site").

3. The DEC alleges that the Respondent (and its predecessor corporations) has operated at the facility for over 20 years manufacturing freeze drying equipment. During the course of its operations, Respondent, directly or indirectly, spilled, leaked, discharged or otherwise released hazardous substances which entered the groundwater. Such releases have contributed to a contravention of the groundwater standards for 1,1,1-trichloroethane at and in the vicinity of the Site.

4. In June and July, 1988, Respondent sampled approximately thirty homeowner's wells in the vicinity of the Site for volatile organic chemicals pursuant to EPA Method 601. The results of that sampling were submitted to the Department in a letter report dated August 5, 1985 to John Sansalone. Seven wells showed levels of 1,1,1-trichloroethane above the detection limit of 1 part per billion ("ppb").

5. In September and October, 1988, Respondent installed an activated carbon filtration system on all homeowner wells with a solvent concentration level above 5 ppb. The filtration system was approved by the Ulster County Department of Health ("DOH") and is described in a letter report to DOH dated August 23, 1988.

6. In August, 1988, on behalf of Respondent, Lawler, Matusky & Skelly Engineers ("LMS") conducted a soil gas survey to investigate the source of the groundwater contamination and to make a determination of the presence, if any, and the extent of soil contamination at the Site. A report describing the

procedure and the results of the soil gas survey was submitted to the Department in September, 1988.

7. In September and October, 1988, on behalf of Virtis, LMS conducted a groundwater and surface water investigation at and in the vicinity of the Site including the installation and sampling of five bedrock monitoring wells and at least one soil well and the sampling of four surface water bodies. The samples were analyzed for volatile organic compounds using EPA Method 601.

8. Section 17-0501 of the Environmental Conservation law ("ECL") provides that:

It shall be unlawful for any person directly or indirectly, to throw, drain, run or otherwise discharge into such waters (waters of the State of New York) organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the Department pursuant to Section 17-0301.

9. Sections 71-1941 and 71-1931 of the ECL provide that a person that has caused a contravention of groundwater standards is liable to the State for the damages that have resulted to therefrom and can be enjoined to abate such damage.

10. The purposes of resolving this matter without resulting in litigation, without admitting any of the allegations contained herein, Respondent waives its right to notice and hearing in the manner provided by law and consents 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. In response to the Department's claim for damages pursuant to ECL, Respondent agrees to comply with the attached Schedule of Compliance, incorporated herein and made a part hereof.

II. The Department shall not institute an action or proceeding for damages or other relief pursuant to law on account of the allegations contained herein for as long as Respondent adheres to and fully complies with the terms, provisions and conditions of this Order. 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 not be in default with compliance of this Order if Respondent is unable to comply with any provision of this Order because of the action of a national or local government body or court, an act of God, war, strike, riot or catastrophe or other circumstances beyond the control of Respondent as to any of which the negligence or willful misconduct on the part of Respondent was not the proximate cause. Respondent shall apply in writing to the Department immediately upon obtaining knowledge of such event and request an appropriate modification to this Order.

IV. If, for any reason, Respondent desires that any provision of this Order be changed, Respondent shall make timely written application therefor to the Department setting forth reasonable grounds for the relief sought, together with any supporting documentation to establish such grounds. Such request shall be made as soon as reasonably possible after Respondent learns of the grounds for such relief. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Department. The Department will not unreasonably deny such requests.

V. All reports and submissions herein required shall be made to the Region 3 Headquarters, New York State Department of Environmental Conservation, 202 Mamaroneck Avenue, White Plains, New York 10601, Attn: Regional Water Engineer. All notices to Respondent hereunder shall be to the Virtis Company, Inc.: Route 208, Gardiner, New York 12525, Attn: S. Gerold Bart.

VI. For the purpose of insuring compliance with this Order, duly authorized representatives of the Department, shall be permitted access to the site in question during reasonable business hours, in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

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

VIII. The Failure of Respondent to comply fully with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.

IX. The provisions of this Order shall be deemed to bind Respondent and its successors and assigns. Respondent shall be responsible for ensuring that its officers, directors, agents, employees, and all persons, firms and corporations acting under or for it comply with the terms and conditions of this Order.

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10. The purposes of resolving this matter without resulting in litigation, without admitting any of the allegations contained herein, Respondent waives its right to notice and hearing in the manner provided by law and consents 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. In response to the Department's claim for damages pursuant to ECL, Respondent agrees to comply with the attached Schedule of Compliance, incorporated herein and made a part hereof.

II. The Department shall not institute an action or proceeding for damages or other relief pursuant to law on account of the allegations contained herein for as long as Respondent adheres to and fully complies with the terms, provisions and conditions of this Order. 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 not be in default with compliance of this Order if Respondent is unable to comply with any provision of this Order because of the action of a national or local government body or court, an act of God, war, strike, riot or catastrophe or other circumstances beyond the control of Respondent as to any of which the negligence or willful misconduct on the part of Respondent was not the proximate cause. Respondent shall apply in writing to the Department immediately upon obtaining knowledge of such event and request an appropriate modification to this Order.

IV. If, for any reason, Respondent desires that any provision of this Order be changed, Respondent shall make timely written application therefor to the Department setting forth reasonable grounds for the relief sought, together with any supporting documentation to establish such grounds. Such request shall be made as soon as reasonably possible after Respondent learns of the grounds for such relief. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Department. The Department will not unreasonably deny such requests.

V. All reports and submissions herein required shall be made to the Region 3 Headquarters, New York State Department of Environmental Conservation, 202 Mamaroneck Avenue, White Plains, New York 10601, Attn: Regional Water Engineer. All notices to Respondent hereunder shall be to the Virtis Company, Inc.: Route 208, Gardiner, New York 12525, Attn: S. Gerold Bart.

VI. For the purpose of insuring compliance with this Order, duly authorized representatives of the Department, shall be permitted access to the site in question during reasonable business hours, in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

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

VIII. The Failure of Respondent to comply fully with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.


IX. The provisions of this Order shall be deemed to bind Respondent and its successors and assigns. Respondent shall be responsible for ensuring that its officers, directors, agents, employees, and all persons, firms and corporations acting under or for it comply with the terms and conditions of this Order.

X. The terms and conditions of this Order shall not create any presumptions of law or findings of fact which shall inure to or be for the benefit of any party and shall not be deemed to be an admission of any kind on the part of Respondent, its officers or employees.

DATED: New Paltz, New York
~~November~~, 1988

February 2, 1989

THOMAS C. JORLING
Commissioner
New York State Department of
Environmental Conservation

By: 
Paul D. Keller
Regional Director
Region 3

TO: Virtis Company, Inc.

SCHEDULE OF COMPLIANCE

1. By December 15, 1988, Virtis shall submit a report entitled "Interim Report on Remedial Investigation (the "Preliminary Report") to the Department summarizing the investigatory work that has been done to date, assessing the source and extent of contamination along with an assessment of the geology and hydrogeology in the area. The report shall include a proposed workplan and schedule for future investigation (the "Workplan").

2. Within 30 days after the Department's receipt of the workplan, the Department shall notify Respondent, in writing, of its approval or disapproval of the Proposal. If the Department approves the proposal, Respondent shall implement it in accordance with its schedule and terms, as approved. If the Department disapproves the Proposal, within 15 days after Respondent receives written notice of disapproval, Respondent shall submit a Revised Proposal. Within 15 days after receipt of revised report the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the Revised Proposal, Respondent shall implement it in accordance with its schedule and terms, as approved. The Proposal or Revised Proposal, as approved, shall be deemed incorporated into this Order.

3. Within 60 days of completing the activities identified in the approved workplan, Respondent shall submit an engineering report (the "Report") defining the extent, degree, nature and source(s) of contamination. The Report shall identify, based upon accepted engineering practice, any and all reasonable measures to reduce, limit or diminish the extent or effect of contamination causing or contributing to contravention of standards ("Remedial Plan"). The Remedial Plan shall include:

- a. Method(s) of removing the contamination and plans for its authorized disposal.
- b. Method of treating recovered groundwater, if applicable.
- c. Point of discharge of the treated recovered groundwater, if applicable.
- d. Proposed schedule of implementation.
- e. Plans for authorized disposal of contamination.

4. Within 30 days after the Department's receipt of the Report and Remedial Plan, the Department shall notify Respondent in writing of its approval or disapproval of the Report and proposed remedial plan. If the Department approves the proposed remedial plan (the "Approved Remedial Plan"), Respondent shall implement it in accordance with the approved

schedule. If the Department disapproves of the Report or the proposed remedial plan, within 30 days of receipt of the Department's written comments, Respondent shall respond to the Department's comments. If the parties are not able to agree on a proposed remedial plan, either party may request an adjudicatory hearing. At the hearing, the Respondent will have the burden of going forward to demonstrate that its proposed remedial plan is consistent with this Order. Part 622 of 6 NYCRR shall govern the procedure of said hearing.

CONSENT BY RESPONDENT

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

VIRTIS COMPANY, INC.

BY: S. L. Bart, Jr.
TITLE: President
DATE: 3 January 1989

CORPORATE ACKNOWLEDGEMENT

STATE OF NY)
COUNTY OF ULSTER) SS.:

On this 3RD day of JANUARY, 1989,
before me personally came, to me known, who being by me duly
sworn did depose and say that he resides in GARDNER, NY
that he is PRESIDENT, of the
Corporation described in and which executed the foregoing
instrument, and that he signed his name as authorized by said
Corporation.

Stephen H. Brichter
NOTARY PUBLIC

STEPHEN H. BRICHTER
NOTARY PUBLIC, STATE OF NEW YORK
COUNTY OF ORANGE
COMMISSION EXPIRES MARCH 30, 1990
#0413700 10/31/89