

NEW YORK STATE: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged
Violations of the Environmental
Conservation Law ("ECL"), Article 17
Part 751.1 of Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York
by:

ORDER ON
CONSENT

FILE NO.
R3-1518-8805

VIRTIS COMPANY, INC.,

Respondent

WHEREAS:

1. New York State Department of Environmental Conservation ("DEC") has management responsibility for the issuance of all SPDES permits, which permits are required for the regulation of discharges into the waters of the State pursuant to Title 8 of 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.

3. The DEC alleges that prior to and since November, 1987 Respondent has discharged industrial wastes to the groundwater without a valid SPDES permit.

4. The DEC alleges that prior to and since November of 1987 Respondent discharged to groundwater industrial wastes at levels that exceeded the limitations for groundwater discharges for 1,1,1-trichloroethane and oil and grease.

5. Section 17-0511 of the Environmental Conservation Law ("ECL") provides that:

"The use of existing or new outlets as 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."

6. Subsection (1)(b) of Section 17-0701 of the ECL provides, in pertinent part, that:

"1. It shall be unlawful for any person, until a written SPDES permit therefor has been granted by the Commissioner, or by his designated representative, and unless such permit remains in full force and effect to:

b. . . use a disposal system for the discharge of sewage, industrial waste or other wastes, or the effluent therefrom, into the waters of the State. ."

7. Section 17-0803 of the ECL and Section 751.1 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6NYCRR") provides that:

It shall be unlawful to discharge pollutants to the waters of the State in a manner other than as prescribed by a SPDES permit issued pursuant to Article 17 of the ECL and the rules and regulations promulgated pursuant thereto.

8. The DEC alleges that the activities described in Paragraph 3 and 4 above constitute violations of Respondent's SPDES permit and Section 17-0511, 17-0701(1)(b), and 17-0803 of the ECL and Part 751.1 of 6 NYCRR.

9. Section 71-1929 of the ECL provides for a civil penalty of up to \$10,000 per day for a violation of any provision of Titles 1 through 11 of Article 17 of the ECL, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto or the terms of a permit issued thereunder. Injunctive relief is also available.

10. For 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 therein.

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

I. In respect of the aforesaid violations, a civil penalty in the amount of \$12,000 is hereby assessed against Respondent, which amount shall be payable as follows: \$2,000 shall be paid by Respondent to the Department within 10 days of receipt by Respondent's of an executed copy of this Order to the Department; \$10,000 of which shall be suspended upon condition that Respondent remain in compliance with each term, provision and condition of this Order. The suspended penalty shall become

payable within 15 days after receipt by Respondent of a notice of noncompliance if the default has not been corrected by the date of receipt of the notice.

II. Respondent agrees to comply with the attached Schedule of Compliance, incorporated herein and made a part hereof.

III. All violations alleged by the Department herein to have been committed by Respondent shall constitute continuing violations. However, the Department shall not institute an action or proceeding for penalties or other relief pursuant to law on account of any of such violations for as long as Respondent adheres to and fully complies with the terms, provisions and conditions of this Order and compliance with the terms, provisions and conditions of this Order shall be in full satisfaction of any relief (including penalties) that could be sought by the Department pursuant to Law on account of the violations alleged herein.

IV. Respondent shall not be in default of compliance with 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.

V. 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 tending 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.

VI. 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. Gerald Bart.

VII. For the purpose of insuring compliance with this Order, duly authorized representatives of this 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.

VIII. 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.

IX. 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 negligence of Respondent, its directors, officers, employees, servants, agents, successors or assigns in the fulfillment of the provisions hereof.

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

XI. The provisions of this Order shall be deemed to bind Respondent, 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.

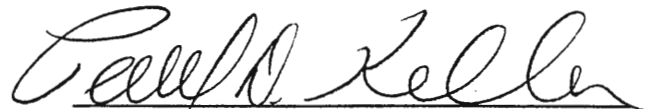
XII. The terms and conditions of this Order shall not create any presumptions of law or findings of fact which shall inure to or be for the benefit of any party and shall not be deemed to be an admission of any kind on the part of Respondent, its officers or employees.

DATED: New Paltz, New York

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. Within four months after the issuance of the SPDES permit, Respondent shall submit a final Engineering Report, plans and specifications for a waste disposal system capable of compliance with the SPDES permit #NY021855. The Engineering Report shall include a proposed construction schedule; the approved schedule shall be deemed part of this Order.
2. Within 30 days after receipt of the Department's approval on the waste disposal system report, Respondent shall commence construction of the waste disposal system.
3. Respondent shall complete construction of the waste disposal system and commence its operation in accordance with the approved schedule.
4. Respondent shall attain compliance with the terms and conditions of its SPDES permit in accordance with the approved schedule.

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.

By: S.G. Bart, Jr.
Title: President
Date: 3 January 1989

STATE OF NY)
COUNTY OF ULSTER) SS.:

On this 3RD day of JANUARY, 1989, before me personally came S.G. BART, JR., to me known, who being by me duly sworn did depose and say that he resides in GARDINER, 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