

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2593
www.dec.ny.gov

BY EMAIL ONLY

October 18, 2023

Amphenol Corporation
Attn: Robert Tyson
40-60 Delaware Avenue
Sidney, NY 13838
tysonr@BSK.com

Re: Order on Consent
R4-20230509-95

Dear Robert Tyson:

Enclosed please find a copy of the fully executed Order on Consent referenced above. A hard copy will not follow unless specifically requested. Please confirm to the undersigned by email at stephen.repsheer@dec.ny.gov when you receive the Order on Consent.

This will also acknowledge receipt of the \$945,000 civil penalty pursuant to Paragraph I.

Sincerely,

Stephen Repsher/eg
Stephen Repsher
Assistant Regional Attorney

Enclosure

ec: J. Weidman
A. Luisi

**STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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

-by-

ORDER ON CONSENT
R4-20230509-95

Amphenol Corporation,

Respondent.

WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with responsibility for the protection of water resources of the State, pursuant to Environmental Conservation Law (“ECL”) Article 17, and the rules and regulations promulgated thereunder at 6 NYCRR Part 750 (“6 NYCRR”).

Respondent

2. Respondent, Amphenol Corporation, is a foreign business corporation authorized to conduct business in New York State which owns and operates the Amphenol Aerospace plating facility, located at 40-60 Delaware Avenue in Sidney, Delaware County, New York (the “Facility”), located approximately one mile from the Respondent’s administrative and manufacturing facilities.

3. Respondent is a person as defined at ECL § 17-105(1).

4. The Facility is subject to State Pollutant Discharge Elimination System (“SPDES”) Permit No: NY-0003824 (the “Permit”) pursuant to 6 NYCRR 750-1.4(a), issued most recently with an effective date of September 1, 2014 and an expiration date of August 31, 2019 (SAPA extended by Department-issued letter dated February 28, 2019).

Relevant Statutory Authority

5. ECL § 17-0511 states, “The use of existing or new outlets or point sources, which discharge sewage, industrial wastes 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. Regulation 6 NYCRR Part 750-2.5(a)(2) requires that “[s]amples and measurements taken to meet the monitoring requirements specified in a SPDES permit shall be representative of the quantity and character of the monitored discharges.”
7. Regulation 6 NYCRR Part 750-2.5(a)(6) states that “[n]o person shall falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under the permit.”
8. Regulation 6 NYCRR Part 750-2.5(b)(2) states that “[n]o person shall knowingly make any material false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance. Any person who violates this subsection shall be liable for violation of ECL section 71-1933 and subject to a fine and/or imprisonment thereunder.”
9. Pursuant to the terms of Respondent’s SPDES Permit, Respondent is authorized to discharge treated wastewater from the Facility to the environment, provided such discharge is in compliance with the effluent limitations, monitoring, and reporting requirements, and other provisions and conditions set forth in the Permit and regulations at 6 NYCRR Parts 750-1 and 750-2.
10. In particular, the SPDES Permit states at General Requirements, Paragraph A, that “The regulations in 6 NYCRR Part 750 are hereby incorporated by reference and the conditions are enforceable requirements under this permit.”

Facts/Background

11. On or about March 18, 2022, Department Staff were notified by the United States Environmental Protection Agency (“EPA”) of an anonymous complaint that the Facility had modified sampling practices by drumming nitric acid prior to weekly wastewater sampling and reintroducing it into the wastewater treatment system after weekly sampling had been completed.¹
12. Department Staff contacted Respondent on March 25, 2022, to advise Respondent of the complaint and to schedule an inspection of the Facility.
13. On April 7, 2022, Department Staff from the Division of Law Enforcement (“DLE”) and Division of Water (“DOW”) conducted an inspection of the Facility and spoke with a number of Respondent’s employees (“April 7, 2022 Inspection”).

¹ Department Staff acknowledge that Respondent’s management, upon learning from its new Environmental Health and Safety Manager of the facts and circumstances described by this consent order, promptly terminated this practice, commenced an internal investigation into the facts and origin of the unauthorized practice, removed the Engineer, Environmental Health Safety & Sustainability who instituted the practice from that function, and instituted plans and procedures to avoid a potential recurrence.

14. During the April 7, 2022 Inspection, Department Staff were informed that on March 17, 2022, Respondent's newly appointed Environmental Health and Safety ("EHS") Manager noticed that nitrogen levels Respondent was reporting in its sampling did not appear to be correct and suspected that those levels had been reported incorrectly since December 2020.

15. During the April 7, 2022 Inspection, Respondent also provided information regarding the status and findings of its internal investigation, including that Facility plating department personnel had been instructed by Respondent's former Engineer, Environmental Health Safety & Sustainability ("EEHSS") to exclude nitrogen containing wastewater from the wastewater treatment system prior to weekly sampling and then add this waste to the treatment system following sampling.

16. On June 2, 2022, DLE Staff conducted a follow-up inspection at the Facility along with two EPA investigators, during which eight of Respondent's managers and employees were present while several of Respondent's employees were interviewed ("June 2, 2022 Inspection").

17. During the June 2, 2022 Inspection, Respondent's employees stated to Department Staff and EPA investigators that they had been directed by Respondent's former EEHSS to remove nitric acid waste and drum it into 55 gallon drums and then bleed it back into the wastewater treatment system after the weekly samples of effluent from Outfall 001 had been collected.

18. Respondent's employees further stated to Department Staff and EPA investigators that this was done to avoid the need to report a potential exceedance of Respondent's 12-month rolling nitrogen limit, which could have resulted in a violation of Respondent's Permit, and that this process was conducted weekly from December 7, 2020 through March 17, 2022 (a period spanning approximately sixty-seven (67) weeks).

19. On June 24, 2022, EPA investigators and Department Staff conducted a virtual interview of Respondent's former EEHSS ("June 24, 2022 Interview"), who stated that in December 2020 a group decision was made by Respondent's management to attempt to reduce nitrogen levels by drumming nitric acid into 55 gallon drums for at least a month (to be properly disposed of off-site). A decision was later made to reintroduce it into the wastewater treatment system the day after the weekly sampling process was completed, instead of proper off-site disposal.

20. E-mails from the former EEHSS provided by Respondent to EPA investigators and Department Staff, demonstrate that the former EEHSS made the decision to sample and dispose improperly in consultation with a plating department employee who had no knowledge of regulatory requirements and who relied on the EEHSS for such matters.

21. Respondent's former EEHSS also acknowledged during the June 24, 2022 Interview that this procedure of drumming and releasing nitric acid waste was a deviation from Respondent's sampling Standard Operating Procedures.

22. Respondent's former EEHSS further stated during the June 24, 2022 Interview that monthly DMRs submitted to the Department during the same period of December 7, 2020 to March 17, 2022 (approximately 16 monthly DMRs) contained similarly misrepresented data.²

VIOLATIONS

23. Respondent excluded the nitric acid waste stream from the wastewater treatment plant and the weekly samples collected for nitrogen and other parameters from Outfall 001 were not representative for the period of December 2020 through March 2022.

24. Respondent's tampering with the method for collecting weekly samples for nitrogen and other parameters for Outfall 001 as required by Respondent's Permit resulted in non-representative samples being reported for the period of December 2020 to March 2022, and thereby constitutes sixty-seven (67) separate and discrete violations of ECL § 17-0511; regulations at 6 NYCRR Parts 750-2.5(a)(2) and 750-2.5(a)(6); and the Permit at General Requirement A.

25. Respondent's submission of DMRs containing materially false information for each monthly reporting period for the period of December 2020 to March 2022, constitutes sixteen (16) separate and discrete violations of ECL § 17-0511; regulations at 6 NYCRR Part 750-2.5(b)(2); and the Permit at General Requirement A.

Waiver of Hearing

26. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and without any adjudication of law or fact, consents to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions.

Civil Penalty

27. ECL § 71-1929(1) provides that: "A person who violates any of the provisions of . . . article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided."

² Department Staff acknowledge that Respondent amended and resubmitted corrected monthly DMRs to the Department on September 27, 2022.

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

I. **Civil Penalty.** Respondent is assessed a civil penalty in the amount of NINE HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$985,000.00), of which FORTY THOUSAND, DOLLARS (\$40,000.00) is suspended and shall not be payable, **provided that** Respondent fully complies with the requirements of this Order and its Schedule of Compliance in a timely manner. If Respondent fails to comply with these requirements, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent, in addition to appropriate penalties for any further violations of this Order.

The payable portion of the civil penalty, NINE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$945,000.00), shall be paid to the General Fund by check made payable to the NYS Department of Environmental Conservation, which shall be sent along with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check to:

**Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway, 10th Floor
Albany, New York 12233-4900**

Payment of the civil penalty shall not in any way alter Respondent's obligation to complete performance under the terms of this Order and its Schedule of Compliance.

Alternatively, payment may be made electronically. Further information on electronic payment is located at: <http://www.dec.ny.gov/about/61016.html#On-Line>

The penalty assessed in the Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset by the penalty amount any tax refund or other monies that may be owed to you by the State of New York.

The original executed and acknowledged Order shall be delivered to:

**Department of Environmental Conservation
Region 4, Office of General Counsel
Attn: Stephen Repsher
1130 North Westcott Road
Schenectady, NY 12306**

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including the attached Schedule of Compliance, and any plans approved pursuant thereto are incorporated into this Order and are enforceable hereunder. Any records submitted to the Department shall include the owner's name, facility name and address, contact name, and phone number.

III. **Settlement.** This Order shall be in full settlement of all claims, fines, criminal and/or civil and administrative penalties that have been or could be asserted by the Department against Respondent, its trustees, officers, employees, successors and assigns for the violations expressly noted in this Order. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge, or which occur, after the Effective Date of this Order.

IV. **Binding Effect.** This Order is binding upon Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting under or controlled by it.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Default of Obligation.** Respondent's failure to comply fully and timely 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.

VII. **Default of Payment.** The penalty assessed in this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to Respondent by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the State of New York when and if such penalty becomes due.

VIII. **Indemnification.** 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, agents, successors or assigns.

IX. **Modification, Entirety of 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. Terms, conditions, understandings or agreements

purporting to modify or vary any term of this Order shall not be binding unless made in writing and subscribed by the party to be bound. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligation(s) to obtain such formal approval(s) as may be required by this Order.

X. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary for the Department to inspect and determine the status of Respondent's compliance with this Order and any laws, rules, regulations, permits, or other Orders under the Department's jurisdiction.

XI. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable thereafter.

XII. **Scope.** 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 or Department may have against Respondent for any violations not cited in this Order.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent for any other violations of the ECL, rules or regulations promulgated thereunder;

C. The Department's right to enforce this Order against Respondent, its officers, directors, and employees, should Respondent fail to fulfill any of the Order's terms or provisions;

D. Whatever right the Department may have to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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 it has been entered into voluntarily by Respondent.

XIII. **Review of Submitted Documentation.**

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

2. The Department shall review each submittal pursuant to this Order to determine whether it was prepared, and whether the work performed 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.

3(a). If the Department disapproves a submittal, it shall 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 the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submittal 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.

XIV. **Communications.** Communications shall be sent to:

For Department:

New York State Department of Environmental Conservation
Region 4
1130 North Westcott Road
Schenectady, NY 12306
Attn: John Weidman, Regional Water Engineer

For Respondent:

Amphenol Corporation
Attn: General Manager
40-60 Delaware Avenue
Sidney, NY 13838

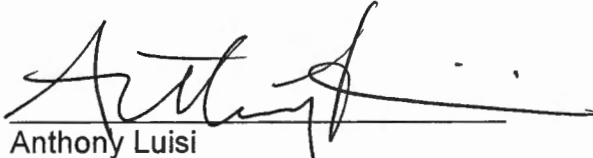
XV. **Termination.** The Order shall terminate upon Respondent's full compliance, as determined by the Department, with the terms, provisions and conditions of this Order, including its Schedule of Compliance.

[Remainder of Page Intentionally Left Blank]

DATED: October 18, 2023
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Anthony Luisi
Regional Director, Region 4

CONSENT BY RESPONDENT

Respondent, **Amphenol Corporation**, hereby consents to the issuing and entering of this Order on Consent (R4-20230509-95), waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Authorized Representative:

SIGNED:  _____

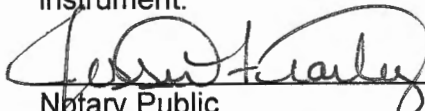
TITLE: General Manager

DATE: 10/6/23

STATE OF NEW YORK)
) ss:
COUNTY OF Delaware)

On the 6th day of October in the year 2023, before me, the undersigned, personally appeared Kyle Brown, personally known (Full name)

to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public
Qualified in the County of:
My Commission Expires:

JESSICA FRAILEY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01FR6407951
Qualified in Broome County
My Commission Expires 07-27-2024

SCHEDULE OF COMPLIANCE

All capitalized terms in this Schedule of Compliance (“Schedule”) shall have the same meanings as those set forth in the Order (R4-20230509-95) to which this Schedule is annexed.

1. **Within thirty (30) calendar days of the Effective Date of Order**, Respondent shall amend any DMRs for Outfall 001 for the period December 2020 through March 2022. This shall include amending 12 month rolling average values for reported Total Nitrogen (which would extend to February 2023), in addition to any other necessary changes, as might be discovered by Respondent.
2. **Within sixty (60) calendar days of the Effective Date of Order**, Respondent shall develop and submit to the Department for review and approval a written SPDES Sampling Plan in accordance with 6 NYCRR Part 750 regulations (Section 750-2.5, attached), which must include:
 - a. a sampling schedule (i.e., date when work will be conducted at same time during each month/week to ensure samples are representative of the quantity and character of the monitored discharges);
 - b. monitoring requirements as required by the SPDES permit;
 - c. proper procedures for calibrating field equipment;
 - d. photographs of each monitoring location;
 - e. special notes to assist the sampling team (e.g., name of analytical laboratory, proper method for storing samples and preparation for transport to laboratory, example of completed Chain-of-Custody, etc.);
 - f. a form template for use by WWTP staff to record pertinent data, including process control information, and other notes (e.g., WWTP operational considerations, replacement of laboratory equipment, occurrences of upsets/spills, etc.); and
 - g. written procedures for training new operators/employees, adequate laboratory controls, and appropriate quality assurance.

NOTE: *This Order on Consent is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations and permits. Respondent’s compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein.*