

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of Article 19 of the
Environmental Conservation Law ("ECL") and
Part(s) 200, 211 of Title 6 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York ("6 NYCRR"), by

ORDER ON CONSENT
Case No. R3-20160722-49

API INDUSTRIES, INC.;

Respondents.

(Rockland County)

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WHEREAS:

1. The Department of Environmental Conservation ("DEC" or "the Department") is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State pursuant to Environmental Conservation Law ("ECL") § 3-0301.

2. The Department has jurisdiction over Air Pollution Control pursuant to ECL Article 19.

3. API Industries, Inc. (the "Respondent") is the owner of the ALUF Plastics Division facility located at 2 Glenshaw Street, Orangeburg, New York (the "Facility").

4. On May 9, 2016, May 25, 2016, and August 25, 2016, the Department cited several violations by Respondent at the Facility. Specifically, Department cited:

A. 6 NYCRR § 200.7, which states that any person who owns or operates an air contamination source which is equipped with an emission control device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures, inclusive of manufacturer's specifications, required to operate such device effectively. On May 9,

2016, May 25, 2016, and August 25, 2016, the Department documented that Respondent had an emission control device that was not in a satisfactory state of maintenance. Holes in the duct work were documented at least at two different locations, which allowed untreated air to be released without passing through the odor removal treatment device. The integrity of the duct work in general entering the carbon bed was documented as very poor. This is a violation of 6 NYCRR § 200.7.

B. 6 NYCRR § 211.1, which states that no person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. On May 9, 2016, May 25, 2016, and August 25, 2016, The Department documented that ineffective duct work was allowing untreated air to enter the atmosphere without being properly treated. Heated plastic odors and perfume odors were documented by Department staff at the Facility's address and beyond to neighboring streets. The Department has further received numerous complaints from the public as to odors affecting the enjoyment of their businesses and properties. This is in violation of 6 NYCRR § 211.1.

5. As per the Department's Order on Consent Enforcement Policy DEE-2, pursuant to Civil Practice Law and Rules of the State of New York § 4547, all evidence or conduct of negotiations or settlement are inadmissible as evidence as proof of liability for or invalidity of the claim which is disputed as to either validity or amount of damages.

6. In compromise and settlement of the above, Respondent affirmatively waives the right to a public hearing in this matter in the manner provided by 6 NYCRR Part 622, consents to the issuing and entering of this Order, agrees to be bound by the

terms, provisions and conditions of this Order, including the Compliance Schedule attached hereto, and waives the right to a public hearing in any matter that may arise under the terms of this Order.

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

I. Civil Penalty. Respondent shall be liable to pay a civil penalty in the amount of FIFTY THOUSAND (\$50,000.00) Dollars, of which TWENTY THOUSAND (\$20,000.00) Dollars is payable to the Department upon Respondent's return of an executed copy of this Order to the Department. The DEC case number appearing on the first page of this Order shall be endorsed on the face of the check. The civil penalty shall be paid by check, bearing the signature of Respondent, made payable to the "Department of Environmental Conservation" and forwarded to the Regional Attorney, New York State Department of Environmental Conservation, Region 3, 21 South Putt Corners Road, New Paltz, New York 12561. The remaining amount, THIRTY THOUSAND (\$30,000.00) Dollars is suspended provided Respondent strictly adheres to the terms and conditions of this Order, including the Schedule of Compliance, attached hereto as "Schedule A". If Respondent violates any term of this Order, including the Schedule of Compliance, the whole amount of the suspended penalty, or any portion thereof, shall be due from Respondent within 30 days of receiving written notice from the Department that penalties are due. The determination of the suspended penalty amount due shall be in the Department's sole and reasonable discretion.

II. Schedule of Compliance.

Respondent shall strictly comply with the terms of this Order and with the attached Schedule of Compliance, including any report(s), plan(s), proposal(s) and

other submissions made pursuant thereto. The Schedule of Compliance and all such submissions are hereby deemed incorporated into this Order, upon approval by the Department if such approval is required, and shall be fully enforceable as part of this Order.

III. Notice of Noncompliance.

In the event that the Department determines, in the Department's sole discretion, that the Respondent has failed to timely and fully comply with any provision of this Order, the Department may serve upon the Respondent a notice of noncompliance setting forth the nature of the violation(s). Service of such notice may be by personal service or by certified mail return receipt requested (restricted delivery not required) at the Respondents' address as specified in Paragraph 3 of this Order, or, if such service is refused or cannot be completed, by ordinary mail.

IV. Full Settlement.

Until fully remediated in accordance with this Order, all violations described above shall be considered continuing violations. The Department shall not institute any action or proceeding for penalties or other relief for the violations described above other than those actions and penalties set forth in this Order, for so long as Respondent remains in compliance with this Order. Any failure by Respondent to comply fully with the terms of this Order may subject the Respondent to further enforcement action for the violations described above. Compliance with this Order shall not excuse nor be a defense to charges of any violations of the ECL or any regulation or permit issued thereunder, which may occur subsequent to the date of this Order.

V. Submission.

All reports and submissions required in this Consent Order shall be submitted to the Department, via U.S. Mail, as follows:

a hardcopy original and an electronic copy in .pdf format to:

George A. Sweikert, Regional Air Pollution Control Engineer
New York State Department of Environmental Conservation, Region Three
21 South Putt Corners Road
New Paltz, New York 12561
Re: Case No. R3-20160722-49

and an electronic copy in .pdf format to the:

Regional Attorney
Office of General Counsel
New York State Department of Environmental Conservation, Region Three
21 South Putt Corners Road
New Paltz, New York 12561
Re: Case No. R3-20160722-49

Respondent shall be responsible for the content of any submissions made pursuant to this Order and shall certify in writing to the Department that such submission complies with the requirements set forth in this Order. Submission of any material containing assertions of fact shall be considered an affirmative representation by Respondent of the truth of such assertions. Respondent shall be in violation of this Order if any submission is of such poor quality that it does not constitute a good faith effort to comply with the provisions of this Order.

VI. Review of Submitted Remedial Plans and Proposals.

After review of any remedial plan or proposal required by this Order and its Schedule of Compliance, the Department shall notify Respondent, in writing, of its approval or disapproval of the submission. If the Department approves the submission, Respondent shall implement it in accordance with its schedule and terms, as approved. If the Department disapproves the submission, the Department shall provide to Respondent written notice of its disapproval, specifying with reasonable particularity the grounds for disapproval. Within 30 (thirty) days after Respondent receives written notice of disapproval, Respondent shall submit a revised submission which fully responds to each of the Department's specified grounds for disapproval. After the Department's receipt of Respondent's revised submission, the Department shall notify Respondent, in writing, of its approval or disapproval. If the Department approves the

revised submission, Respondent shall implement it in accordance with its schedule and terms, as approved. 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 accept such modifications as may be specified by DEC to make it approvable. If the Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submission, the Respondent shall be in violation of this Order. Upon Department approval, a submission or revised submission shall be deemed incorporated into this Order.

VII. Notice of Work.

Respondent shall provide notice to the Department of any excavating, drilling, sampling, construction or start-up of equipment to be conducted pursuant to the terms of this Order, if any, at least five (5) working days in advance of such activities.

VIII. Inspections.

For the purpose of insuring compliance with this Order, and with applicable provisions of the ECL and regulations promulgated thereunder, representatives of this Department shall be permitted access to the facility and to relevant records during reasonable hours to inspect and/or perform such tests which the Department deems appropriate to determine the status of Respondent's compliance.

IX. Conveyance.

In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Facility, Respondent shall, not less than 30 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

X. Other Approvals.

Respondent shall be obligated to obtain whatever permits, easements, rights of entry, approvals or authorizations may be necessary in order to carry out its obligations under this Order. This Order shall not relieve the Respondent of the obligation to comply with any other laws, rules or regulations of the State of New York or any other governmental authority which are applicable to Respondent's activities, nor preclude or limit such enforcement action as may be authorized by law for any such violation.

XI. Other Remedies; Natural Resource Damages.

(a) Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) the Department's right to enforce, administratively or at law or in equity, the terms, provisions and conditions of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall be in breach of the provisions hereof; (3) the Department's right to bring any action, administratively or at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns which the Department could otherwise maintain with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of wastes from the site or from areas in the vicinity of the site, or to require that Respondent take such additional measures as may be necessary for the protection of public health or the environment, including interim remedial measures; (4) the Department's right to commence any action or proceeding relating to or arising out of any disposal of hazardous wastes at the site, as those wastes are defined by applicable regulation; or (5) the Respondent's right to challenge any such action by the Department, whether by administrative hearing or otherwise, to the extent otherwise permitted by law.

(b) Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights or authorities, including the right to recover natural resource damages, against any party, including Respondent.

(c) This Order shall not be construed to prohibit the Commissioner or the Commissioner's duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XII. Indemnification.

Respondent or any successors, assigns or transferees, shall indemnify and hold harmless 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 this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XIII. Force Majeure.

Respondent shall not be in default of compliance with this Order to the extent that Respondent may be 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 as to any of which the negligence or willful misconduct on the part of Respondent was not a proximate cause; provided, however, that Respondent shall use its best efforts to comply. Respondent shall provide written notice to the Department immediately upon obtaining knowledge of such event. In addition, Respondent shall, within twenty-one days of such event, provide written request to the Department for an appropriate extension or modification to this Order, along with documentation

evidencing entitlement to relief herein. Relief under this clause shall not be available to Respondent, with regard to a particular event, if Respondent fails to provide timely notice of such event. The Respondent shall have the burden of proving entitlement to relief under this clause, by clear and convincing evidence.

XIV. Modification.

This Order may not be modified except in a writing executed by the DEC Commissioner or the DEC Commissioner's authorized representative.

XV. Default.

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.

XVI. Entire Agreement.

The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the violations set forth above. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing pursuant to Paragraph XIV hereof. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

XVII. Binding Effect.

This Order shall be deemed to bind the Respondent, its officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for Respondent, including, without limitation, any subsequent operator of the Facility who may carry on activities now conducted by Respondent at the Facility, and any successor in title to the Facility or any interest

therein. Respondent shall provide a copy of this Order (including any submissions incorporated herein) to any contractor or subcontractor hired to perform work required under this Order, and shall require compliance with this Order as a term of any contract for performance of work under this Order. Respondent shall nonetheless be responsible for ensuring that all work performed under this Order is in compliance with the terms of the Order.

XVIII. Effective Date.

This Order shall not become effective until it is signed by the Regional Director on behalf of the Commissioner.

Dated: New Paltz, New York
12/13, 2016

BASIL SEGGOS
Commissioner
Department of Environmental Conservation

By: Kelly R. Turturro
KELLY R. TURTURRO
Acting Regional Director, Region 3
Department of Environmental Conservation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of this Order without further notice, waives its right to a hearing in this matter, and agrees to be bound by the terms, conditions and provisions of this Order. The undersigned represents and affirms that they have the legal authority to bind Respondent(s) to the terms and conditions of this Order.

API INDUSTRIES, INC.

By: Juan R Rosenberg
Title: CEO - PRES

ACKNOWLEDGMENT

On this 12 day of December, in the year 2016, before me, the undersigned, personally appeared Susan Rosenberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as shown in the instrument, 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.

Ann Marie Ziffer
Notary Public

ANN MARIE ZIFFER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01216329660
Qualified in Rockland County
My Commission Expires August 31, 2019

SCHEDULE A

Schedule of Compliance for Order on Consent

Respondent: API INDUSTRIES, INC.
Site or Facility: 2 Glenshaw Street, Orangeburg, New York
DEC Case No.: R3-20160722-49

RESPONDENT IS REQUIRED TO SELF-CERTIFY TIMELY COMPLETION OF EACH OF THE ACTIVITIES REQUIRED BY THIS SCHEDULE.

1. Respondent(s) shall immediately cease and desist from any and all future violations of the New York State Environmental Conservation Law and the rules and regulations enacted pursuant thereto.
2. **Self-certification:** Respondent(s) shall submit to DEC, within fifteen (15) days of each milestone date set forth in this Schedule of Compliance, a signed statement certifying that the work required was completed by that date, and that the work was done in the manner required by this Order.

Submission of the required certification shall be considered an affirmative representation by the Respondent of the truth of its contents. Any false statement made therein shall be punishable pursuant to Section 210.45 of the Penal Law, and as may be otherwise authorized by law.

Failure to submit a required certification by the due date shall be a violation of this Order, and shall establish a legal presumption that Respondent(s) has failed to comply with that requirement of the Schedule.

All technical submittals to the Department required under this Order shall be made by Respondent(s) as follows:

All submittals, which shall include a hardcopy original and an electronic copy in .pdf format shall be submitted to the Department, via U.S. Mail, in accordance with Section V of this Order.

Schedule of Compliance for Order on Consent Continued

Respondent: API INDUSTRIES, INC.
Site or Facility: 2 Glenshaw Street, Orangeburg, New York
DEC Case No.: R3-20160722-49

3. Remedial Activities and Milestones: Respondent(s) shall timely perform the activities set forth below in a good and workmanlike manner and supply all required labor, equipment and materials at Respondent's own cost and expense:

- a) **Within 10 Days of the Effective Date of this Consent Order:**
All duct work at the Facility shall be repaired and maintained in a satisfactory state of maintenance.
- b) **Within 10 Days of the Effective Date of this Consent Order:**
Respondent shall provide the Department with a name and phone number of a person who can be reached during all hours that the Facility is operating. The Respondent shall update this information within 24-hours of any changes.
- c) **Within 10 Days of the Effective Date of this Consent Order:**
Respondent shall install a sign at the main entrance of the Facility which identifies a telephone number to reach a manager at the Facility during all times of operation and also when the office is closed.
- d) **By October 21, 2016:**
Respondent shall submit to the Department a scope of work, which shall focus on a review of the work practices at the Facility, identify the source and the reason of the odors at the Facility, and an investigation of solutions to the odor issues. Once reviewed by the Department, suggestions or concerns made by the Department shall be added to the scope of work to be completed.
- e) **By January 21, 2017:**
Respondent shall submit to the Department a report which shall include the result of the study, proposed solutions and a schedule to implement the solutions at the Facility. Upon submission of this report, a meeting will be scheduled within 30 days at the DEC Region 3 Offices in order for Department staff to discuss the report results with the Respondent and implementation of proposed solutions as set forth in the report. Once the report is approved by the Department in writing, the schedule shall be implemented immediately.
- f) **Within 60 days of Department approval of the Report:**
Respondent shall implement whatever measures are necessary, as proposed by the report, in order to ensure that best management practices are implemented to prevent odorous air from any process that takes place inside the Facility from being sensed in the surrounding neighborhoods at levels which are injurious to human, plant or animal life or to property,

or which unreasonably interfere with the comfortable enjoyment of life or property. Every two weeks thereafter, a progress report shall be submitted to the Department reporting progress until one year after all remedial measures have been implemented.



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

ALUF PLASTICS DIV

RECEIPT

NUMBER

613043

Region Number

3

Location

New Paltz Legal Affairs

Date

12/13/16

Received of

API Industries Inc.

In the amount of

Twenty thousand and 00/100's

\$ 20,000-

For

Civil Penalty - Article 19

Case # R3-20160722-49

☐ Cash

Department Representative

SD

☒ Check

Number

82036

Title

Secretary 2

☐ Money Order

ORIGINAL