

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

Third Modification of
ORDER ON CONSENT

DEC File No. R4-2000-0104-1M3

- by -

Town of Berne

Respondent

WHEREAS:

1. New York State and the Department of Environmental Conservation have jurisdiction to protect the waters of the State pursuant to Environmental Conservation Law (“ECL”) Article 17 and the State Pollutant Discharge Elimination System (“SPDES”) permit program and applicable regulations.

2. Respondent is subject to Order on Consent R4-2000-0104-1 (effective November 9, 2000) (“Order”). The Order, which was subsequently modified on March 28, 2001 and again on December 17, 2003, contains a Schedule of Compliance.

3. Respondent has requested further changes to the Order’s Schedule of Compliance. The Department finds good cause for granting Respondent’s request.

4. Respondent has affirmatively waived their right to a hearing in the manner provided by law and has consented to the issuing of this 3rd Modification and has agreed to be bound by the terms, provisions, and conditions contained herein.

NOW, being duly advised and having considered this matter, IT IS HEREBY ORDERED THAT:

I. In respect of the aforesaid violation, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) is hereby assessed against the Respondent. TWO HUNDRED FIFTY DOLLARS (\$250) of the civil penalty is due upon the return of a signed and notarized copy of this 3rd Modification to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, SEVEN HUNDRED FIFTY DOLLARS (\$750), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this

Order in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. Paragraph B of the Order's Schedule of Compliance is changed accordingly:

B. 1) By June 1, 2009, Respondent shall begin construction in accordance with the Department approved wastewater treatment facility plans.

2) By September 1, 2010, Respondent shall complete construction of the wastewater treatment facilities and eliminate all discharges of sewage from the storm water system to Fox Creek.

III. The effective date of this 3rd Modification shall be the date it is signed by the Department.

IV. All terms, provisions, and conditions of the Order and the 1st and 2nd Modifications remain in effect unless expressly modified in this 3rd Modification.

DATED: _____, 2008
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT
Town of Berne

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

BY: _____ TITLE: _____

DATE: _____

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

On the ___ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for the State, personally appeared, _____, personally known 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 he executed the same in his capacity, and that by his signature on the 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: