

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Article 17

ORDER ON CONSENT

- by -

File No. R4-2009-0227-48

Village of Canajoharie

Respondent

WHEREAS:

1. The Department has jurisdiction in all matters pertaining to the protection of the water quality of the State pursuant to ECL Article 17.

2. Respondent, Village of Canajoharie, 75 Erie Boulevard, Canajoharie, New York, owns and operates a wastewater treatment plant ("WWTP") that is subject to a State Pollutant Discharge Elimination System ("SPDES") permit. There are Significant Industrial Users ("SIU") tributary to the WWTP. Each SIU is permitted independently by the Village.

3. The SPDES permit sets effluent discharge limits for BOD₅, Total Suspended Solids (TSS), and TSS, Percent Removal.

4. The following SPDES permit effluent discharge limit violations have been noted through March 2009:

Violations Summary:

Parameter	Permit Limit	DMR	Reported Value
BOD - five day	45 mg/l (7 day average)	April 2007 December 2007 September 2007 March 2008 April 2008 January 2009	48 mg/l x 1 46 mg/l x 1 56 mg/l x 1 96 mg/l x 3 61 mg/l x 1 49 mg/l x 1
	30 mg/l (30 day average)	December 2007 March 2008 January 2009	33 mg/l 67 mg/l 40 mg/l
	1005 lbs/day (7 day average)	March 2008 April 2008	2242 lbs/day x 3 1119 lbs/day x 1
	700 lbs/day (30 day average)	March 2008	1237 lbs/day
Total Suspended Solids (TSS)	45 mg/l (7 day average)	February 2007 March 2007 April 2007 September 2007 November 2007 December 2007 March 2008 April 2008 September 2008 November 2008 January 2009 March 2009	62 mg/l x 1 56 mg/l x 1 66 mg/l x 1 82 mg/l x 1 52 mg/l x 1 48 mg/l x 1 63 mg/l x 3 80 mg/l x 1 96 mg/l x 2 56 mg/l x 1 57 mg/l x 1 60 mg/l x 1
	30 mg/l (30 day average)	February 2007 March 2007 April 2007 September 2007 November 2007 December 2007 March 2008 April 2008 September 2008 November 2008 January 2009	42 mg/l 36 mg/l 39 mg/l 42 mg/l 31 mg/l 37 mg/l 52 mg/l 38 mg/l 43 mg/l 35 mg/l 40 mg/l

Parameter	Permit Limit	DMR	Reported Value
Total Suspended Solids (TSS)	1005 lbs/day (7 day average)	September 2007 March 2008 April 2008 September 2008	1299 lbs/day x 1 1171 lbs/day x 2 1468 lbs/day x 1 1201 lbs/day x 1
	700 lbs/day (30 day average)	March 2008	960 lbs/day
Total Suspended Solids (TSS)	85% - Minimum (Monthly Average)	February 2007 March 2007 April 2007 September 2007 October 2007 November 2007 February 2008 March 2008 April 2008 June 2008 September 2008 November 2008 January 2009 February 2009	72% 80% 66% 78% 84% 83% 82% 62% 79% 81% 80% 81% 78% 82%

5. ECL 17-0511 states that “the use of existing or new outlets or 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. The effluent discharge limit violations cited in Paragraph 4 above are violations of ECL 17-0511.

7. ECL 71-1929 provides that any person who violates any provision of Titles 1 through 11 inclusive and title 19 of Article 17 of the ECL or any rule or regulation, order or determination of the Commissioner promulgated thereunder shall be liable for a civil penalty of up to thirty seven thousand five dollars (\$37,500). Injunctive relief is also available.

8. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

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 TWENTY ONE THOUSAND FIVE HUNDRED DOLLARS (\$21,500) is hereby assessed against the Respondent. TWENTY ONE THOUSAND FIVE HUNDRED DOLLARS (\$21,500) 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. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for them.

III. 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.

IV. Respondent shall indemnify and hold the Department, the State of New York, their representatives, employees, agents and contractors 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 the Respondent, its directors, officers, trustees, employees, servants, agents, successors (including successors in title) and assigns. This indemnification does not extend to any claims, suits, actions, damages or costs to the extent attributable to grossly negligent, reckless or intentional acts of the Department or the State of New York, their representatives, employees, agents or contractors.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site at reasonable times in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

Regional Water Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. 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 may have against Respondent for any other violations of the ECL , rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, their agents, their servants, their employees, their successors and their assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's' employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. 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 this Order has been entered into voluntarily by Respondent.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations in this Order.

XIII. This Order is made strictly for the purposes of the Department and the State and is not intended for use by any third party.

DATED: _____, 2009
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
Village of Canajoharie

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: Mayor

DATE: April, 2009

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

On the ___ day of April in the year 2009 before me, the undersigned, a Notary Public in and for the State, personally appeared LEIGH W. FULLER, 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:

SCHEDULE OF COMPLIANCE

1. Within 60 days of the effective date of the Order, Respondent shall submit an engineering report to the Department for review and approval that contains the following:
 - A. A detailed analysis of the treatment plant concluding what is specifically causing non-compliance with the SPDES permit. This shall include an independent analysis of each treatment train (Beech-Nut and municipal);
 - B. A detailed analysis of all Significant Industrial User (SIU) discharges to the treatment plant and what impact they have on the treatment plant;
 - C. A detailed listing of all reasonably available options available to bring the wastewater treatment plant back into compliance with the SPDES permit. This shall include the evaluation of process changes at the treatment plant and pre-treatment changes at each SIU;
 - D. A summary of the specific actions that will be taken to ensure SPDES compliance based on the available options discussed in paragraph C above. Operational corrective measures that are recommended and approved by the Department must be completed no later than November 15, 2009;
 - E. A summary and time line of all measures taken by Respondent against each SIU since the start of substantial non-compliance in 2007. Respondent shall undertake all reasonable technical and legal measures to bring each SIU into compliance, including the enforcement of SIU permits and the local sewer use ordinance. On or before November 15, 2009, Respondent shall submit to the Department all measures taken to ensure each SIU is in compliance;
 - F. A summary of operational changes that may be necessary to ensure SPDES compliance should Beech-Nut relocate as scheduled in 2010.