

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

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Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3993

February 7, 2014

Timothy Ryan, Superintendent
Cherry Valley-Springfield Central School District
597 County Hwy 54
P.O. Box 485
Cherry Valley, NY 13320

Re: Order of Consent
R4-2014-0110-2

Dear Mr. Ryan:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$5063.00 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: M. Isaacson

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

In the Matter of the Alleged
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,

Order on Consent
R4-2014-0110-2

- by-

Cherry Valley-Springfield Central School District
597 County Hwy 54
P.O. Box 485
Cherry Valley, NY 13320

Respondent

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (DEC or Department) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to § 3-0301 of the Environmental Conservation Law (ECL). In particular, DEC is and has been responsible for the protection of the water resources of the State, pursuant to ECL Article 17 and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 750, et seq.
2. Respondent, Cherry Valley-Springfield Central School District, located at 597 County Hwy 54, Cherry Valley, NY 13320, owns and operates a sewage treatment system that discharges to Tributary 33 of Cherry Valley Creek pursuant to a State Pollution Discharge Elimination System (“SPDES”) SPDES Permit No. NY 0222747, effective December 1, 2010, which expires on November 30, 2015 (“SPDES permit”).
3. Respondent is a “person” as that term is defined at 6 NYCRR 750-1.2(a)(64).
4. The SPDES permit contains Permit Limits, Levels and Monitoring definitions and requirements. The SPDES permit requires the Respondent to submit Discharge Monitoring Report (“DMRs”) forms to the Department for each one month reporting period. The reports are due by no later than the 28th day of the month following the end of each reporting period.

5. Regulations at 6 NYCRR 750-1.4 provide that “...no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit.”

6. Respondent’s SPDES Permit requires that it sample and test the following parameters: phosphorus, biochemical oxygen demand (“BOD₅”), ammonia, suspended solids, and dissolved oxygen, and to report those results in its DMR reports.

7. Respondent’s DMR reports show the following violations:

<u>Parameter</u>	<u>DMR Date</u>	<u>Limit</u>	<u>DMR Reported Value</u>
Phosphorus	11/2013	1.0 mg/l Daily Max	7.6 mg/l
Phosphorus	10/2013	1.0 mg/l Daily Max	4.7 mg/l
Phosphorus	9/2013	1.0 mg/l Daily Max	9.2 mg/l
Phosphorus	8/2013	1.0 mg/l Daily Max	3.3 mg/l
Phosphorus	7/2013	1.0 mg/l Daily Max	1.2 mg/l
Phosphorus	5/2013	1.0 mg/l Daily Max	4.2 mg/l
Phosphorus	4/2013	1.0 mg/l Daily Max	3.4 mg/l
Phosphorus	1/2013	1.0 mg/l Daily Max	3.0 mg/l
Phosphorus	12/2012	1.0 mg/l Daily Max	2.5 mg/l
Phosphorus	11/2012	1.0 mg/l Daily Max	1.5 mg/l
Phosphorus	10/2012	1.0 mg/l Daily Max	5.9 mg/l
Phosphorus	9/2012	1.0 mg/l Daily Max	1.6 mg/l
Phosphorus	6/2012	1.0 mg/l Daily Max	6.5 mg/l
Phosphorus	5/2012	1.0 mg/l Daily Max	4.7 mg/l
Phosphorus	4/2012	1.0 mg/l Daily Max	6.9 mg/l
Phosphorus	3/2012	1.0 mg/l Daily Max	2.5 mg/l
Phosphorus	2/2012	1.0 mg/l Daily Max	1.8 mg/l
Phosphorus	1/2012	1.0 mg/l Daily Max	3.0 mg/l
Phosphorus	12/2011	1.0 mg/l Daily Max	3.3 mg/l
Phosphorus	11/2011	1.0 mg/l Daily Max	3.4 mg/l
Phosphorus	10/2011	1.0 mg/l Daily Max	3.7 mg/l
Phosphorus	9/2011	1.0 mg/l Daily Max	4.0 mg/l
Phosphorus	6/2011	1.0 mg/l Daily Max	2.6 mg/l
Phosphorus	5/2011	1.0 mg/l Daily Max	4.8 mg/l
Phosphorus	4/2011	1.0 mg/l Daily Max	2.8 mg/l
Phosphorus	3/2011	1.0 mg/l Daily Max	1.1 mg/l
Phosphorus	1/2011	1.0 mg/l Daily Max	1.9 mg/l
BOD ₅	11/2013	5 mg/l Daily Max	23 mg/l
BOD ₅	10/2013	5 mg/l Daily Max	8 mg/l
BOD ₅	9/2013	5 mg/l Daily Max	27 mg/l
BOD ₅	5/2013	5 mg/l Daily Max	6 mg/l
BOD ₅	4/2013	5 mg/l Daily Max	<6 mg/l
BOD ₅	1/2013	5 mg/l Daily Max	<6 mg/l
BOD ₅	12/2012	5 mg/l Daily Max	<6 mg/l

BOD ₅	11/2012	5 mg/l Daily Max	<6 mg/l
BOD ₅	10/2012	5 mg/l Daily Max	7 mg/l
BOD ₅	9/2012	5 mg/l Daily Max	8 mg/l
BOD ₅	6/2012	5 mg/l Daily Max	13 mg/l
BOD ₅	5/2012	5 mg/l Daily Max	6 mg/l
BOD ₅	4/2012	5 mg/l Daily Max	<6 mg/l
BOD ₅	3/2012	5 mg/l Daily Max	<6 mg/l
BOD ₅	2/2012	5 mg/l Daily Max	<6 mg/l
BOD ₅	1/2012	5 mg/l Daily Max	<6 mg/l
BOD ₅	12/2011	5 mg/l Daily Max	<6 mg/l
BOD ₅	11/2011	5 mg/l Daily Max	19 mg/l
BOD ₅	10/2011	5 mg/l Daily Max	16 mg/l
BOD ₅	9/2011	5 mg/l Daily Max	30 mg/l
BOD ₅	6/2011	5 mg/l Daily Max	<6 mg/l
BOD ₅	5/2011	5 mg/l Daily Max	<6 mg/l
BOD ₅	4/2011	5 mg/l Daily Max	13 mg/l
BOD ₅	3/2011	5 mg/l Daily Max	<6 mg/l
BOD ₅	2/2011	5 mg/l Daily Max	<6 mg/l
BOD ₅	1/2011	5 mg/l Daily Max	9 mg/l
Ammonia	11/2013	2.0 mg/l Daily Max	58.0 mg/l
Ammonia	10/2013	2.0 mg/l Daily Max	42.5 mg/l
Ammonia	9/2013	2.0 mg/l Daily Max	61.0 mg/l
Ammonia	5/2012	10.0 mg/l Daily Max	17.1 mg/l
Ammonia	4/2012	10.0 mg/l Daily Max	30.9 mg/l
Ammonia	9/2011	2.0 mg/l Daily Max	31.4 mg/l
Ammonia	5/2011	2.0 mg/l Daily Max	28 mg/l
Ammonia	1/2011	10.0 mg/l Daily Max	22.4 mg/l
Suspended Solids	11/2013	10 mg/l Daily Max	16 mg/l
Suspended Solids	9/2013	10 mg/l Daily Max	15 mg/l
Suspended Solids	12/2012	10 mg/l Daily Max	18 mg/l
Suspended Solids	10/2011	10 mg/l Daily Max	15 mg/l
Suspended Solids	9/2011	10 mg/l Daily Max	17 mg/l
Dissolved Oxygen	9/2011	7.0 mg/l (Daily Min)	1.0 mg/l

8. Respondent's exceedences of the above SPDES permit parameter effluent limits are violations of the SPDES permit and 6 NYCRR 750-1.4.

Civil Penalty

9. ECL Section 71-1929 provides for a civil penalty of up to \$37,500 per day for a violation of any provision of Titles 1 through 11 inclusive and title 19 of Article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto. Injunctive relief is also available.

Waiver of Hearing

10. Respondent affirmatively waives its right to a hearing in the manner provided by law, consents to the issuance and entry of this Order on Consent and agrees 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. Civil Penalty

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

With respect to the aforesaid violation, a civil penalty in the amount of TWENTY FIVE THOUSAND THREE HUNDRED THIRTEEN DOLLARS (\$25,313) is hereby assessed against the Respondent of which FIVE THOUSAND SIXTY THREE DOLLARS (\$5,063) shall be payable to the New York State Department of Environmental Conservation by money order or certified check at the time this Order is signed, notarized and returned to the Department. The TWENTY THOUSAND TWO HUNDRED FIFTY DOLLARS (\$20,250) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

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. Settlement and Reservation of Rights

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning SPDES permit violations that pre-date the effective date of the Order and the violations described in the Motion for Summary Order.

B. Except as provided in Subparagraph III.A of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

III. Schedule of Compliance

The attached Schedule of Compliance is incorporated into the Order on Consent.

IV. Force Majeure

Respondent shall not be in default of compliance with this Order if it is unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war, strike, riot or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify DEC in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

V. Communications

All communications required herein shall be made to:

DEC Region 4
1130 North Westcott Road
Schenectady, NY 12306
Attn: Regional Water Engineer

VI. Access

Respondent shall allow duly authorized representatives of DEC and NYC DEP access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC and NYC DEP to inspect and determine the status of Respondent's compliance with this Order or the ECL.

VII. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, 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, servants, agents, successors or assigns.

VIII. Review of Submittals

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

2. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3. a. If the Department disapproves a submittal, it shall so 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 of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. 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 Department to make it approvable. If Respondent does not accept such modifications, the revised submission 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.

IX. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent.

X. Modification

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.

XI. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph X of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

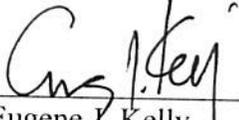
XII. Effective Date

The effective date of this Order shall be the date it is signed by the Department.

Dated: 2/7, 2014
Rotterdam, NY

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Eugene J. Kelly
Regional Director
Region 4

Schedule of Compliance

1. Within 3 months of the effective date of the Order, Respondent shall submit to the Department, a report prepared by a New York State licensed professional engineer, evaluating the cause of permit limit violations. A corrective action plan shall be included in the report with a schedule which brings the facility into compliance within 12 months of the effective date of the Order.
2. Within 60 days of the effective date of the Order, Respondent shall employ a wastewater treatment plant operator for operation and maintenance of the WWTP. The operator shall be, at a minimum, a Grade 1 certified wastewater treatment plant operator.