

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED
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August 22, 2016

Honorable Michael Villa
City of Amsterdam
City Hall, 61 Church Street
Amsterdam, NY 12144

Re: Order on Consent
R4-2016-0616-113

Dear Mayor Villa:

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

This will also acknowledge receipt of \$5,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsely
Assistant Regional Attorney
Region 4

Enclosure

cc: E. Cruden

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Environmental
Conservation Law Article 17
And 6 NYCRR Part 750

ORDER ON CONSENT

File No. R4-2016-0616-113

-by-

City of Amsterdam.

WHEREAS:

1. The Department of Environmental Conservation ("Department" or "DEC") is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated thereto, including Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"). The United States Environmental Protection Agency ("EPA") has approved the New York State Pollution Discharge Elimination System ("SPDES") to implement the Clean Water Act National Pollutant Discharge Elimination System ("NPDES") permit program.
2. Respondent, City of Amsterdam, is a municipality which operates the municipality's Publicly Owned Treatment Works located in Amsterdam, New York ("POTW").
3. Respondent was issued SPDES permit #NY-0020290 ("SPDES Permit") for the POTW authorizing discharges to the Mohawk River.

Compliance History

4. Respondent entered into an Order on Consent, effective December 29, 2003 (R4-2003-1117-125) ("2003 Order") regarding violations of ECL Article 17 and the regulations promulgated thereunder.
5. Respondent entered into a modification of the 2003 Order effective March 4, 2004 (R4-2003-1117-125M) ("2004 Modification") regarding violations of ECL Article 17 and the regulations promulgated thereunder.
6. Respondent entered into a second modification of the 2003 Order effective October 17, 2005 (R4-2003-1117-125M2) ("2005 Second Modification") regarding violations of ECL Article 17 and the regulations promulgated thereunder.

7. Respondent entered into Order on Consent effective August 30, 2010, (R4-2010-0630-65) ("2010 Order") regarding violations of ECL Article 17 and the regulations promulgated thereunder.

8. Respondent entered into a Modification of the 2010 Order effective December 1, 2011 (R4-2010-0630-65M) ("2011 Modification") regarding violations of ECL Article 17 and the regulations promulgated thereunder.

9. Respondent entered into an Order on Consent effective April 27, 2015 (R4-2014-0320-87) ("2015 Order") regarding violations of ECL Article 17 and the regulations promulgated thereunder.

**First Violation
Violation of 2015 Order**

10. Pursuant to the 2015 Order, Respondent was to submit a post construction compliance monitoring plan to the Department by July 31, 2015.

11. Respondent failed to submit an approvable post construction compliance monitoring plan to the Department by July 31, 2015.

12. In failing to submit to the Department an approvable post construction compliance monitoring plan to the Department by July 31, 2015, Respondent violated the terms of the 2015 Order.

**Second Violation
Violation of 2015 Order**

13. Pursuant to the 2015 Order, Respondent was to submit an asset management plan to the Department within 90 days of the effective date of the 2015 Order (July 27, 2015).

14. Respondent failed to submit to the Department an asset management plan by July 27, 2015.

15. In failing to submit to the Department an asset management plan by July 27, 2015, Respondent violated the terms of the 2015 Order.

**Third Violations
Effluent Limitation Exceedances**

16. ECL §17-0511 prohibits the use of point sources unless in compliance with all standards, criteria and limitations.

17. 6 NYCRR Part 750-2.1(e) states that the “permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for: enforcement action; for permit suspension, revocation or modification; and for denial of a permit renewal application.”

18. The SPDES Permit sets the following effluent discharge limits:

- a. BOD 7-day average 45 mg/L
- b. BOD % removal 85%
- c. TSS 7-day average 45 mg/L
- d. TSS % removal 85%
- e. Settleable solids daily max .3mL/L
- f. Flow 30-day average 10.0 MGD

19. The SPDES Permit requires Respondent to submit on a monthly basis to the Department discharge monitoring reports (“DMRs”).

20. Respondent submitted DMRs that identified SPDES Permit effluent violations as detailed below.

| Parameter | SPDES Permit Limit | Exceedance Level | Exceedance Date |
|-------------------------------|--------------------|------------------|-----------------|
| Settleable Solids (daily max) | .3 mL/L | 0.8 | September 2015 |
| Settleable Solids (daily max) | .3 mL/L | 0.5 | October 2015 |
| BOD (7 day average) | 45 mg/L | 49 | March 2015 |
| BOD (7 day average) | 45 mg/L | 48 | February 2016 |
| BOD (% removal) | 85% | 82 | February 2015 |
| BOD (% removal) | 85% | 71 | March 2015 |
| BOD (% removal) | 85% | 78 | April 2015 |
| BOD (% removal) | 85% | 79 | January 2016 |
| BOD (% removal) | 85% | 68 | February 2016 |
| BOD (% removal) | 85% | 78 | April 2016 |
| TSS (7 day average) | 45 mg/L | 53 | March 2015 |
| TSS (7 day average) | 45 mg/L | 53 | February 2016 |
| TSS (% removal) | 85% | 79 | March 2015 |
| TSS (% removal) | 85% | 79 | February 2016 |
| Flow (30 day average) | 10.0 MGD | 10.58 | March 2015 |
| Flow (30 day average) | 10.0 MGD | 11.88 | April 2015 |

21. Respondent’s SPDES Permit effluent exceedances are violations of ECL §17-0511, 6 NYCRR Part 750-2.1(e), and the SPDES Permit.

Fourth Violation Unpermitted Discharges

22. ECL §17-0511 states that “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.”
23. 6 NYCRR Part 750-2.1(e) states that the “permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for: enforcement action; for permit suspension, revocation or modification; and for denial of a permit renewal application.”
24. The SPDES Permit states that “Dry weather overflows from the combined sewer system are prohibited.” (SPDES Permit Best Management Practices for Combined Sewer Overflows Para. 6.)
25. On May 8, 2016, Respondent had an unpermitted dry weather discharge of unknown volume from the East Side Pump Station. This discharge was not reported through NY-Alert.
26. On May 30, 2016, Respondent had an unpermitted dry weather discharge of an estimated 650,000 gallons of untreated sewage from the East Side Pump Station. This discharge was reported through NY-Alert (No. 4569480).
27. On June 30, 2016, Respondent had an unpermitted dry weather discharge of an estimated 90,508 gallons of untreated sewage from the West Side Pump Station. This discharge was reported through NY-Alert (No. 4604374).
28. On July 13, 2016, Respondent had an unpermitted dry weather discharge of an estimated 517,153 gallons of untreated sewage from the West Side Pump Station. This discharge was reported through NY-Alert (No.4602958).
29. On July 15, 2016, Respondent had an unpermitted dry weather discharge of an estimated 1,062 gallons of untreated sewage from the West Side Pump Station. This discharge was reported through NY-Alert (No. 4605735).
30. On July 25, 2016, Respondent had an unpermitted dry weather discharge of untreated sewage at an estimated flowrate of 50 gallons per minute to the North Chuctanunda Creek in the vicinity of Forest Avenue. This discharge was reported through NY-Alert (No. 4613909).
31. Respondent’s unpermitted discharges on May 8 and 30, 2016, June 30, 2016, and July 13, 15, and 25, 2016, are violations of ECL §17-0511, 6 NYCRR Part 750-2.1(e), and the SPDES Permit.

Fifth Violation
Failure to Maintain and Operate Equipment

32. 6 NYCRR Part 750-2.8.(a)(2) states “The permittee shall, at all times, properly operate and maintain all disposal facilities, which are installed or used by the permittee to achieve compliance with the conditions of the permit.”

33. Department staff determined that the May 8 and 30, 2016, overflows from the East Side Pump Station were due to avoidable equipment failures and/or failure to properly operate and maintain critical equipment. Department staff determined that the June 30, 2016 and July 13 and 15, 2016, overflows from the West Side Pump Station were due to avoidable equipment failures and/or failure to properly operate and maintain critical equipment. The overflows resulted from Respondent’s failure to: (a) properly install the valves to ensure proper operation which would have allowed the valves to close properly and restart automatically; and (b) clean the bar screen on the East Side Pump Station resulting in sewage backing up and discharging from the CSO at a time when there was adequate capacity in the pump station wet well, pump, and downstream influent pipe to convey sewage to the POTW.

34. Respondent’s failure to properly operate and/or maintain the East Side Pump Station and West Side Pump Station, which are installed or used by Respondent to achieve compliance with the conditions of the SPDES Permit, are violations of 6 NYCRR Part 750-2.8.(a)(2).

Sixth Violation
Failure to Timely Report Sewage Discharge

35. ECL §17-0826-a states “Publicly owned treatment works or the operator of a publicly owned sewer system shall immediately, but in no case later than two hours after discovery, report discharges of untreated or partially treated sewage, including combined sewer overflows, except partially treated sewage discharged directly from a publicly owned treatment works that is in compliance with a department approved plan or permit, to the department and the local health department, or if there is none, the New York state health department.”

36. The SPDES Permit states “The occurrence of any dry weather overflow shall be promptly abated and reported to the NYSDEC Regional Office in accordance with 6 NYCRR Part 750-2.7.”

37. The New York State NY-Alert system is used to report untreated or partially treated sewage in accordance with ECL §17-0826.

38. On May 8, 2016, Respondent had sewage discharges from the East Side Pump Station that were not reported to the appropriate entities in a timely manner through NY-Alert.

39. Respondent's failure to immediately, but in no case later than two hours after discovery, report discharges of untreated or partially treated sewage, to the Department are violations of ECL § 17-0826-a the SPDES Permit.

Civil Penalty

40. ECL Section 71-1929 states that "Any person who violates any provision of Article 17 shall be liable for a penalty of up to thirty seven thousand five hundred dollars (\$37,500) per day for each violation."

Waiver of Hearing

41. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuance of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order on Consent.

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

I. With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of TWENTY FIVE THOUSAND DOLLARS (\$25,000) of which FIVE THOUSAND DOLLARS (\$5,000) 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. TWENTY THOUSAND DOLLARS (\$20,000) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

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

II. This Order on Consent shall supersede all prior orders and modifications.

III. Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

IV. This Order is binding upon the Respondent and shall inure to its benefit and that of its successors and assigns. Respondent is responsible for ensuring that its agents, its employees, its successors, assigns and to all persons and firms, and corporations acting subordinate thereto comply with terms and conditions thereof.

V. All communications except where otherwise specifically directed should be sent as follows:

To the Department at:

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

Please include the name and address of the facility as well as the permit number for the facility.

To the Respondent at:

Mayor Michael J. Villa
City of Amsterdam
City Hall, 61 Church Street
Amsterdam, New York 12010

VI. The terms and conditions of the Schedule of Compliance may be delayed or modified if the Respondent cannot comply with the terms of this Order because of an act of God, war, strike or other condition as to which conduct on the part of the Respondent or its consultant, contractor or agent was not the proximate cause; provided, however, that the Respondent notifies the Department in writing within 5 days of obtaining knowledge of any such condition and requests an appropriate extension or modification of the Schedule of Compliance.

VII. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

VIII. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question without prior notice in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance with this Order, and the ECL and regulations promulgated thereunder.

IX. Respondent shall indemnify and hold 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 the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

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 or Department may have against Respondent for any violations not cited in this Order on Consent.

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, its officers, directors, agents, servants, employees, successors and assigns;

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

D. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, 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 this Order has been entered into voluntarily by Respondent.

XI. Review of Submitted Documents

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 sixty (60) 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. The effective date of this Order shall be the date the Order is signed by the Department.

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

DATED: August 18, 2016
Rotterdam, New York

Basil Seggos
Commissioner
New York State
Department of Conservation

BY: 
Keith Goertz
Regional Director
Region 4

Schedule of Compliance

A. Respondent shall complete all remaining tasks included in the Sanitary Sewer Inflow and Infiltration (I/I) Report, prepared by John M. McDonald Engineering, dated October 2010 and the sewer collection system rehabilitation portion of the work proposed in the engineering report titled CSO Improvement Project, prepared by John M. McDonald Engineering, dated March 2016 in accordance with the following schedule with the goal of meeting USEPA's "Presumptive Approach" for CSOs.

| | | |
|----|--|--------------------|
| 1. | System Monitoring | September 30, 2016 |
| 2. | Manhole Inventory | September 30, 2016 |
| 3. | Field Investigation | September 30, 2016 |
| 4. | Internal Sewer Inspection | September 30, 2016 |
| 5. | Construct Sewer Separation/ Rehabilitation & I/I Elimination Projects | November 30, 2017 |
| 6. | Final Report | December 31, 2017 |
| 7. | Progress Reports | Semi-Annual |

B. By August 31, 2016, Respondent shall submit to Department staff a final Post Construction Compliance Monitoring Plan under the Long Term Control Plan Implementation Requirements as referenced in the SPDES Permit. The final plan shall address the Department's comments dated January 15, 2016.

C. By September 30, 2016, Respondent shall complete construction of the emergency repairs necessary to ensure that dry weather overflows at the West Side Pump Station caused by electrical pump restart faults related to the existing valves that were improperly installed are eliminated and to allow each pump to be individually isolated for inspection, repair, or replacement. Prior to initiating construction on the West Side Pump Station, Respondent shall implement bypass pumping to convey all dry weather flow to the Waste Water Treatment Plant and to prevent the discharge of raw sewage to the Mohawk River during dry weather.

D. By October 31, 2016, Respondent shall submit to Department staff an approvable Asset Management Plan (AMP). The AMP shall be developed in accordance with the USEPA's April 2008 "Asset Management: A Best Practices Guide." Respondent shall update the AMP as necessary and submit changes to Department staff upon request. The AMP will include the following information and any other information or measures inherent in the AMP development and implementation process:

1. An inventory of assets (including both equipment and personnel);
2. An assessment of criticality, condition and lifespan of equipment under the full range of flows experienced;
3. A ranking and prioritization of asset maintenance and improvements;

4. An initial capital improvement plan and schedule for the implementation of projects to achieve continued compliance with the SPDES Permit, the governing regulations (6 NYCRR Part 750), and USEPA's "Presumptive Approach" for CSOs. The initial capital improvement plan and schedule shall, at a minimum, include the remaining pump station and treatment POTW rehabilitation portions of the work proposed in the engineering report titled CSO Improvement Project, prepared by John M. McDonald Engineering, dated March 2016. The schedule shall include milestones for at least design completion, notice-to-proceed-to-construction, and construction completion. The construction of all the pump station and treatment POTW rehabilitation portions of the work shall be completed by December 31, 2018.
 5. Once approved, the AMP and schedules will become an enforceable part of this Order. The requirement to comply with the provisions of this section of this Order shall terminate when the requirements set forth in this section are effective in an enforceable SPDES Permit. Department staff agrees that it will not seek to require Asset Management SPDES terms which are inconsistent with, or more stringent than, those set forth in this Section.
- E. Respondent shall immediately investigate the cause of the discharge of raw sewage to the North Chuctanunda Creek in the vicinity of Forest Avenue as reported by the City on July 25, 2016, and make all necessary repairs to halt the discharge. The Respondent shall regularly monitor this area of the North Chuctanunda Creek to confirm that the discharge remains resolved and to verify that no other discharges are occurring. The information obtained during the investigation shall be considered in the Asset Management Plan required by Item D above.
- F. Compliance with this Order on Consent and Schedule of Compliance shall not be a defense to noncompliance by Respondent with its SPDES Permit, including all effluent limits.
- G. A Certificate of Compliance form, signed by the Mayor, shall be submitted to Department staff for each deadline in this Schedule of Compliance within 14 days of each deadline. A copy of a Certificate of Compliance form is attached which can be copied and used for each deadline.