

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 3786

April 29, 2015

Gerald DeCusatis
Corporation Counsel
City of Amsterdam
61 Church Street
Amsterdam, NY 12010

Re: Order of Consent
R4-2014-0320-87

Dear Mr. DeCusatis:

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

This will also acknowledge receipt of \$13,750 the civil penalty pursuant to Paragraph I.

Sincerely,



Richard Ostrov
Regional Attorney
Region 4

Enclosure

ec: E. Cruden



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the 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 (6 NYCRR)

ORDER
ON
CONSENT

DEC Case
R4-2014-0320-87

- By -

CITY OF AMSTERDAM

Respondent.

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WHEREAS:

1. The New York State Department of Environmental Conservation ("Department") is and has been a Department of the State of New York charged with administration of the State Pollutant Discharge Elimination System ("SPDES"), pursuant to Article 17, Title 8 of the Environmental Conservation Law ("ECL") Parts 750-757, Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").

2. The Department has jurisdiction over the discharge of pollutants into the waters of the State and authority to maintain the cleanliness and purity of such waters pursuant to Article 17 of the ECL and Parts 750-757 of 6 NYCRR.

3. Respondent, City of Amsterdam, is a municipality which operates and is responsible for the Waste Water Treatment Plant ("WWTP") located at Quist Road, Amsterdam, New York.

4 Respondent was issued a State Pollution Discharge Elimination System permit (SPDES# 0020290) ("SPDES permit") for the WWTP authorizing discharges to the Mohawk River.

5. State and Federal laws require the operation of the WWTP in conformance with the conditions, requirements and limitations set forth in its SPDES permit.

6. The SPDES permit Best Management Practices (“BMP”) No.6 prohibits the dry weather discharges from combined sewer outfalls (“CSO”).

7. Respondent is subject to Modification of Order on Consent R4-2010-0630-65 (effective date December 1, 2011) which contains a Schedule of Compliance. The Schedule of Compliance is superseded by this Order on Consent’s Schedule of Compliance.

Unpermitted Discharge

8. On December 12, 2013 two pumps at the west side pump station failed causing Respondent to discharge over the next eight days approximately 24 million gallons of untreated sanitary sewage from CSO Outfall 004 (West Side Pump Station) to the Mohawk River.

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

10. Respondent’s dry weather discharge from the CSO is a violation of its SPDES permit and ECL Section 17-0511.

SPDES Permit Violations

11. The SPDES permit sets, in part, effluent discharge limits for (a) BOD5 30-day and 7-day averages; (b) total suspended solids 30-day and 7-day averages; (c) BOD % removal; (d) suspended solids % removal; (e) settleable solids daily; and (f) flow 30-day average;

12. The SPDES permit requires the Respondent to submit on a monthly basis to the Department discharge monitoring reports ("DMRs").

13. Respondent submitted DMRs that identified SPDES permit effluent violations.

Attachment A contains a list of the SPDES permit effluent limit violations.

Civil Penalties

14. ECL 7 1-1929(1) provides that: “A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”

Waiver of Hearing

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

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. Civil Penalties

Respondent is hereby assessed a civil penalty in the amount of SIXTY- EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$68,750) for the violations stated herein. THIRTEEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$13,750) of the civil penalty is due with the return of the signed and notarized Order. FIFTY-FIVE THOUSAND DOLLARS (\$55,000) 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.

II Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance and any reports submitted and approved under this Order, and the Schedule of Compliance and all approved reports are incorporated and made part of this Order.

III. Summary Abatement

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

IV. Binding Effect

This Order is binding upon the Respondent, its agents, its employees, its successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. Communications

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

For Department:

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

For Respondent:

Mayor
City of Amsterdam
City Hall, 61 Church Street
Amsterdam, New York 12010

VI. Modification

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.

VII. Access

For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

VIII. Indemnification

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 Respondents, its directors, officers, employees, servants, agents, successors or assigns.

IX. Reservations

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 there under or permits issued there under

based upon other than existing contamination.

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, its officials, agents, servants, employees, successors and assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's officials, 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.

X. Submittals

(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 submittals 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 twenty (20) 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.

XI. Effective Date

The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

DATED: April 27, 2015
Rotterdam, New York

BY:

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation



Keith Goertz
Regional Director
Region 4

Attachment A - Violations

NY0020290 AMSTERDAM (C) WWTP Violations May 2011 to January 2015

Outfall	Parameter	Date	Limit	DMR Value	Units	Stat Base
001A	BOD, 5-day, 20 deg. C	11/30/2011	45.	52	mg/L	7 DA AVG
001A	BOD, 5-day, 20 deg. C	11/30/2011	3800.	4731	lb/d	7 DA AVG
001A	BOD, 5-day, 20 deg. C	05/31/2013	30.	46	mg/L	30DA AVG
001A	BOD, 5-day, 20 deg. C	05/31/2013	45.	124	mg/L	7 DA AVG
001A	BOD, 5-day, 20 deg. C	05/31/2013	2500.	3966	lb/d	30DA AVG
001A	BOD, 5-day, 20 deg. C	05/31/2013	3800.	10971	lb/d	7 DA AVG
001A	BOD, 5-day, percent removal	05/31/2011	85.	80	%	MO AV MN
001A	BOD, 5-day, percent removal	11/30/2011	85.	75	%	MO AV MN
001A	BOD, 5-day, percent removal	12/31/2011	85.	68	%	MO AV MN
001A	BOD, 5-day, percent removal	01/31/2012	85.	82	%	MO AV MN
001A	BOD, 5-day, percent removal	02/29/2012	85.	79	%	MO AV MN
001A	BOD, 5-day, percent removal	03/31/2012	85.	83	%	MO AV MN
001A	BOD, 5-day, percent removal	05/31/2012	85.	77	%	MO AV MN
001A	BOD, 5-day, percent removal	08/31/2012	85.	78	%	MO AV MN
001A	BOD, 5-day, percent removal	09/30/2012	85.	79	%	MO AV MN
001A	BOD, 5-day, percent removal	11/30/2012	85.	80	%	MO AV MN
001A	BOD, 5-day, percent removal	12/31/2012	85.	77	%	MO AV MN
001A	BOD, 5-day, percent removal	01/31/2013	85.	71	%	MO AV MN
001A	BOD, 5-day, percent removal	02/28/2013	85.	72	%	MO AV MN
001A	BOD, 5-day, percent removal	03/31/2013	85.	73	%	MO AV MN
001A	BOD, 5-day, percent removal	04/30/2013	85.	75	%	MO AV MN
001A	BOD, 5-day, percent removal	05/31/2013	85.	31	%	MO AV MN
001A	BOD, 5-day, percent removal	06/30/2013	85.	67	%	MO AV MN
001A	BOD, 5-day, percent removal	07/31/2013	85.	77	%	MO AV MN
001A	BOD, 5-day, percent removal	12/31/2013	85.	80	%	MO AV MN
001A	BOD, 5-day, percent removal	01/31/2014	85.	68	%	MO AV MN
001A	BOD, 5-day, percent removal	02/28/2014	85.	78	%	MO AV MN
001A	BOD, 5-day, percent removal	03/31/2014	85.	77	%	MO AV MN

001A	BOD, 5-day, percent removal	04/30/2014	85.	71	%	MO AV MN
001A	BOD, 5-day, percent removal	05/31/2014	85.	81	%	MO AV MN
001A	BOD, 5-day, percent removal	12/31/2014	85.	73	%	MO AV MN
001A	BOD, 5-day, percent removal	01/31/2015	85.	79	%	MO AV MN
001A	Flow, in conduit or thru treatment plant	10/31/2011	10.	10.18	MGD	30DA AVG
001A	Flow, in conduit or thru treatment plant	05/31/2012	10.	10.28	MGD	30DA AVG
001A	Flow, in conduit or thru treatment plant	05/31/2013	10.	10.06	MGD	30DA AVG
001A	Flow, in conduit or thru treatment plant	06/30/2013	10.	11	MGD	30DA AVG
001A	Flow, in conduit or thru treatment plant	12/31/2014	10.	11.35	MGD	30DA AVG
001A	Solids, settleable	01/31/2012	.3	.6	mL/L	DAILY MX
001A	Solids, settleable	05/31/2012	.3	2	mL/L	DAILY MX
001A	Solids, settleable	10/31/2012	.3	.6	mL/L	DAILY MX
001A	Solids, settleable	05/31/2013	.3	8	mL/L	DAILY MX
001A	Solids, settleable	07/31/2013	.3	2	mL/L	DAILY MX
001A	Solids, suspended percent removal	11/30/2011	85.	70	%	MO AV MN
001A	Solids, suspended percent removal	05/31/2012	85.	80	%	MO AV MN
001A	Solids, suspended percent removal	11/30/2012	85.	81	%	MO AV MN
001A	Solids, suspended percent removal	12/31/2012	85.	75	%	MO AV MN
001A	Solids, suspended percent removal	01/31/2013	85.	75	%	MO AV MN
001A	Solids, suspended percent removal	02/28/2013	85.	77	%	MO AV MN
001A	Solids, suspended percent removal	05/31/2013	85.	47	%	MO AV MN
001A	Solids, suspended percent removal	06/30/2013	85.	77	%	MO AV MN
001A	Solids, suspended percent removal	01/31/2014	85.	84	%	MO AV MN
001A	Solids, suspended percent removal	01/31/2015	85.	84	%	MO AV MN
001A	Solids, total suspended	11/30/2011	30.	44	mg/L	30DA AVG
001A	Solids, total suspended	11/30/2011	45.	114	mg/L	7 DA AVG
001A	Solids, total suspended	11/30/2011	2500.	3903	lb/d	30DA AVG
001A	Solids, total suspended	11/30/2011	3800.	10621	lb/d	7 DA AVG
001A	Solids, total suspended	05/31/2013	30.	52	mg/L	30DA AVG
001A	Solids, total suspended	05/31/2013	45.	157	mg/L	7 DA AVG
001A	Solids, total suspended	05/31/2013	2500.	5030	lb/d	30DA AVG
001A	Solids, total suspended	05/31/2013	3800.	15613	lb/d	7 DA AVG

Schedule of Compliance --City of Amsterdam – R4-2014-0320-87

- A. This Schedule of Compliance supersedes the Schedule of Compliance contained in the 2011 Modification of Order on Consent R4-2010-0630-65M.
- B. Respondent shall complete all work necessary to meet the CSO presumptive approach (4-6 overflows per year or 85% capture) by December 30, 2017. Work shall include but not necessarily be limited to that outlined in the October 29, 2010 McDonald Engineering Sanitary Sewer Inflow and Infiltration (I/I) Report, in accordance with the dates below. The report and schedule is incorporated by reference into this Order and enforceable thereunder.
1. System Monitoring – complete by September 2016
 2. Manhole Inventory – complete by September 2016
 3. Field Investigation – complete by September 2016
 4. Internal Sewer Inspection – complete by September 2016
 5. Construct Sewer Separations & I/I Elimination Projects – complete by November 2017
 6. Final Report – complete by December 2017
 7. Progress Reports – Submitted Semi-Annually
- C. By April 15, 2015, the Respondent shall begin to track the percent capture of total volume of flow during precipitation events as outlined in section 4.1.2.4 of the “Post Construction Compliance Monitoring Guidance” published by EPA in 2012. Progress and results shall be included in the CSO annual reports which are submitted by January 31st of every year in accordance with the permit. Respondent shall include the volume discharged on the Report of Non-Compliance form submitted with Discharge Monitoring Reports (DMRs) for all CSO discharge events.
- D. By July 31, 2015, Respondent shall submit to the Department a Post Construction Compliance Monitoring Plan under the LTCP Implementation Requirements as referenced in the SPDES permit.
- E. Within 90 days of the effective date of this Order, Respondent shall submit to the Department an Asset Management Plan (“AMP”) for the collection system to the Department. The AMP shall be developed in accordance with the U.S. EPA’s April 2008 “Asset Management: A Best Practices Guide.” Respondent shall update the AMP as necessary and submit changes to the Department as needed. 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 based on the subparagraph B assessment and the schedule in the Plan; and
 4. An itemized capital budget plan for funding and maintaining continuous compliance with its permit and regulations in 6 NYCRR Part 750 et seq. The approved AMP will be an enforceable part of this Order until incorporated into Respondent's permit and then enforceable there under.
- F. Within 60 days of the effective date of the Order, Respondent shall submit to the Department an updated Wet Weather Operations Plan.
- G. 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.