

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law (“ECL”) Article 17 and
Title 6 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York (6 NYCRR)

ORDER ON CONSENT

- by -

File No. R4-2008-1002-144

Village of Coxsackie
119 Mansion Street
Coxsackie, NY 12051

Respondent

WHEREAS:

1. The Department of Environmental Conservation (“Department”) is the State agency which has jurisdiction over the environmental law and policy of the State pursuant to, *inter alia*, §3-0301 of the Environmental Conservation Law. 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, Village of Coxsackie, is a municipality of the State of New York which operates a waste water treatment plant (“WWTP”) located at 119 Mansion Street, Coxsackie, New York (“site”). The WWTP is regulated by State Pollutant Discharge Elimination System permit No. NY-0033545 (“permit”). The permit authorizes the discharge of treated wastewater to the Hudson River (class “A”) through outfall 001. The permit requires, among other things, the monitoring of the WWTP discharge and the submittal of discharge monitoring reports (“DMR”) which summarize monitoring data on a monthly basis. Paragraph 7 below contains a list of permit effluent violations reported by the Respondent on its DMRs.
3. ECL §17-0511 states that the use of existing or new outlets or point sources which discharge sewage or other wastes into waters of this State is prohibited unless such use is in compliance with all Department standards, limitations or regulations.

4. Respondent has violated ECL §17-0511, and its permit by the following:

Violation Summary:

Parameter	Permit Limit	DMR	Reported Value
BOD, 5-day, Percent Removal	85 Percent	April 2007	81 Percent
Fecal Coliform, 7-day, Geometric Mean	400 Colonies/100 mL	August 2006 October 2006 May 2007 October 2007 December 2007 August 2008	> 400 Colonies/100 mL > 400 Colonies/100 mL > 400 Colonies/100 mL > 492 Colonies/100 mL > 400 Colonies/100 mL > 400 Colonies/100 mL
Late DMR	DMR to be received by the Department on the 28 th of following month	February 2007 April 2007 November 2007 December 2007 March 2008	
Lack of compliance with requirements of current SPDES Permit No. 0033545	Submittal of approvable Long Term Control Plan (To address impacts related to CSO)	To be received by May 21, 2008	Received by schedule date but document was not approvable by Department

5. 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 up to thirty seven thousand five hundred dollars (\$37,500). Injunctive relief is also available.

6. 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, having considered this matter and being duly advised, **IT IS HEREBY ORDERED THAT:**

PENALTY

I. With respect to the aforesaid alleged violation, a civil penalty in the amount of FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$4,800) is hereby assessed against the Respondent of which ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) 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 balance (\$3,300) 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 Department will send Respondent a notice of non-compliance. Respondent will have ten (10) business days to respond to the notice and demand a meeting. After providing said due process (including a meeting, if requested), the Department will issue a written decision stating whether the suspended portion of the penalty is due and payable without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

SCHEDULE OF COMPLIANCE

II. Respondent shall commence implementation of the activities described in the attached Schedule of Compliance, which is an enforceable part of this Order, in accordance with its terms. Respondent shall meet the schedule therein.

REPORTS

III. All reports required herein shall be made to the Region 4 office of DEC, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Water Engineer.

ACCESS

IV. Respondent shall allow duly authorized agents and employees of DEC access to any facility, site, or records owned, operated, controlled, or maintained by Respondent, without prior notice, at such times as may be desirable or necessary, and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

INDEMNIFICATION

V. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees, 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 Respondent, his or her employees, servants, agents, successors or assigns.

SUCCESSORS AND ASSIGNS

VI. The provisions of this Order shall be deemed to bind Respondent, ITS agents employees, successors, and assigns, and all persons, firms, and corporations acting under or for Respondent.

EFFECTIVE DATE

VII. The effective date of this Order shall be the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's Counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or her designee signs it.

DEFAULT

VIII. The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.

MODIFICATION

IX. This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

OTHER RIGHTS

X. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

DATED: July , 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 Coxsackie

Respondent hereby consents to the issuing and entering of this Order, waives its 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:

SCHEDULE OF COMPLIANCE

1. On or before August 21, 2009, Respondent shall develop a work plan which includes an expeditious schedule to investigate and address the inflow and infiltration (I/I) from the collection system and determine whether the collection system is separate or combined. This plan shall include any previous investigation or remediation activities and depict such work on maps and figures. The schedule shall be prepared such that all investigative work and corrective measures to address I/I are completed by December 31, 2020. Periodic updates shall be provided to the Department on December 31, 2009 and annually thereafter. Once approved by the Department, the plan and schedule shall become enforceable under the Order.

2. Sewer Moratorium - Until satisfactory completion of the Schedule of Compliance, no new sewer connections shall be approved or constructed within the Respondent's sewer system except as follows:

a) Connections shall be allowed to eliminate existing or potential public health nuisances or hazards.

b) Relief may be granted by the Department in certain cases where economic hardship can be clearly demonstrated.

c) Other new connections shall be considered as work progresses on I&I removal pursuant to the Schedule of Compliance. Application of such relief shall be made to the Regional Water Engineer. Such application shall include, at a minimum, a description of the quantity of wastes and types of waste to be introduced to the system, an assessment of the capacity of the existing system to accept the additional flow without overloading the WWTP, an assessment of the effect of the additional discharge on the receiving water, the reduction of flow to the WWTP from remediation of I&I, if appropriate, and an evaluation of the overall environmental effect if the limited relief is not allowed. The Department will either approve or disapprove such application in writing, exercising its reasonable discretion in accordance with criteria above.