

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

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

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Website: www.dec.ny.gov



Joe Martens
Commissioner

CONFIRMATION BY EMAIL ORDER RECIEVED

June 17, 2013

Mr. Mark Evans, Mayor
Village of Coxsackie
119 Mansion St.
Coxsackie, NY 12051
Mayor@villageofcoxsackie.com

Philip H. Dixon, Esq.
Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, NY 12260
pdixon@woh.com

Re: Modification of Order on Consent
Coxsackie WWTP
SPDES No. NY 0033545
R4-2008-1002-144M

Dear Mayor Evans & Mr. Dixon:

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

Sincerely,

Richard Ostrov
Regional Attorney
Region 4

Enclosure

cc: A. Dzierwa

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

**MODIFICATION OF
ORDER ON CONSENT
("MODIFICATION")**

- by -

File No. R4-2008-1002-144M

Village of Coxsackie
119 Mansion Street
Coxsackie, NY 12051

Respondent

WHEREAS:

1. The Department of Environmental Conservation (ADepartment@) 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 that operates a waste water treatment plant (AWWTP@) located at 119 Mansion Street, Coxsackie, New York (A site@) that discharges to Hudson River through outfall 001. The WWTP is regulated by State Pollutant Discharge Elimination System permit No. NY-0033545 (A permit@).
3. The permit, based on information supplied by the Respondent identified four combined sewer outfalls ("CSOs"). Outfalls 001A, 004 and 008 discharge to the Hudson River and Outfall 002 to the Coxsackie Creek. A CSO results when a collection system, by design, conveys both sanitary waste and stormwater for discharge, via an overflow, to the waters of the state.
4. Respondent is also subject to Order on Consent R4-2008-1002-144 (July 31, 2009) ("Order").
5. The Order's Schedule of Compliance Paragraph 1 required the Respondent to

submit a work plan by August 21, 2009 to the Department for review and approval that contained an expeditious schedule to investigate and address infiltration and inflow (I/I) from the collection system and formally define the collection system as separate (sanitary waste only) or combined (sanitary waste and stormwater).

6. For the period from July 2011 to the effective date of this Order, the average daily flow of waste water to the WWTP was approximately 750,00 gallons per day (gpd). During this period, 58% of the average daily flow to the WWTP came from two main users; the Greene Correctional Facility (176,821 gpd) and Coxsackie Correctional Facility (257,320 gpd).

7. The Respondent submitted a Sanitary Sewer Investigation Work Plan (“SSIP”) to the Department in August 2009 and the Department approved the SSIP on December 3, 2009. The SSIP states that the four (4) overflow locations listed on the SPDES permit are not of the CSO type but rather sanitary sewer overflows (SSO).

8. Paragraph 1 of the Order’s Schedule of Compliance makes the approved SSIP and its schedules and attachments enforceable under the Modification.

SSIP Requirements by Year

9. The Respondent committed in the SSIP during the 2010 calendar year to investigate the sewer lines on Kings, Apple Blossom, Spencer, Bailey, Raymond Roads and a section of State Highway 385 and complete manhole inspections of the entire system.

10. Respondent committed in the SSIP during the 2011 calendar year to implement repairs to the sewer lines investigated in 2010 and relocates the sewer line along Coxsackie Creek northwest of the West Coxsackie Pump Station.

Notice of Violation

11. On July 17, 2012, Respondent was sent a notice of violation (“NOV”) by the Department for the violations of the Order addressed in this Modification.

Violations of the SSIP and the Order

12. Section 4.0 of the Department approved SSIP contains work to be completed by the Respondent for the investigation of the sewer system and the implementation of measures to reduce I/I.

13. Respondent has failed as of the effective date of this Modification to complete manhole inspections of its entire sewer system and has failed to implement the repairs to the sewer lines on Kings, Apple Blossom, Spencer, Bailey, Raymond Roads and a section of State Highway

385.

14. Respondent's failure to complete the work required by the SSIP for 2010 and 2011 as described in Paragraph 13 are continuing violations of the SSSIP and the Order.

SSOs

15. The SSIP states that: "The collection system incorporates four sanitary sewer overflow discharge locations, two of which are located at pump stations. The four sanitary sewer overflow locations are listed as CSOs on the facility SPDES permit although they are not combined stormwater and sanitary sewers."

16. The sewage discharged from the four (4) overflow locations is untreated. No formal flow measurement or estimate exists for any of the overflow locations.

17. ECL § 17-0807(4) prohibits the following: "any discharge not permitted by the provisions of this article, rules and regulations adopted or applicable pursuant hereto, the Act, or provisions of a permit issued hereunder.

18. ECL §17-0509 requires Respondent to provide effective secondary treatment as a minimum degree of treatment prior to the discharge of sanitary sewage into the surface waters of the state.

19. Respondent's discharge of untreated sewage from its four outfalls to surface waters of the state are violations of ECL §17-0509 and ECL ' 17-0807(4).

Effluent Limit Violations

20. The Permit sets, in part, effluent discharge limits for fecal coliform and flow.

21. The Permit requires the Respondent to submit to the Department discharge monitoring reports ("DMRs") on a monthly basis.

22. Respondent submitted sampling results in its DMRs that identified the following violations of the Permit and ECL § 17-0807(4).

<u>Date</u>	<u>Parameter</u>	<u>Effluent Limit</u>	<u>Result</u>
5/2011	Flow (30 day avg.)	1.25 mgd	1.319 mgd
11/2010	Fecal coliform, 7-day geometric mean	400 (No./100 ml)	>400
3/2011	Fecal coliform	400 (No./100 ml)	>400
6/2011	Fecal coliform	400 (No./100 ml)	>400

Civil Penalties

23. 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.

Waiver of Hearing

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

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

PENALTY

I. With respect to the aforesaid alleged violations, a civil penalty in the amount of TEN THOUSAND DOLLARS (\$10,000) is hereby assessed against the Respondent. The civil penalty is suspended provided Respondent complies with this Modification. Payment of the suspended penalty shall be due to the Department within fifteen (15) calendar days of the receipt by the Respondent of a notice of violation from the Department which sets forth the violations of the Modification. This provision shall not limit the Department's right to seek other remedies provided by law and the applicable regulations for violations of this Modification and ECL Article 17 and regulations, respectively.

SCHEDULE OF COMPLIANCE

II. Respondent shall comply with the Schedule of Compliance and any milestone date or requirement in the Schedule of Compliance or any milestone date or requirement in any

Department approved submittal pursuant to the requirements of the Schedule of Compliance.

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 Modification by Respondent, its employees, servants, agents, successors or assigns.

SUCCESSORS AND ASSIGNS

VI. The provisions of this Modification 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 Modification 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 Modification as soon as practicable after the Commissioner or his designee signs it.

MODIFICATION

VIII. This Modification is 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 and the Respondent

indicating intent to modify this Modification. The terms, conditions and provisions of this Modification and its Schedule of Compliance supersedes the Order's terms, conditions and provisions and the Order's Schedule of Compliance unless expressly provided otherwise in this Modification.

OTHER RIGHTS

IX. Nothing contained in this Modification 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 Modification ; (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 there under, or conditions contained in orders or permits, if any, issued by the Department to Respondent; and (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

FULL SETTLEMENT

X. This Modification settles the civil and administrative violations identified herein.

SEMI-ANNUAL REPORTS

XI. By the 15th day of July and January of each calendar year, Respondent shall submit a report detailing its compliance with the Schedule of Compliance requirements including but not limited to a list of all actions taken and costs incurred.

TERMINATION OF MODIFICATION

XII. This Modification shall be deemed completely satisfied and shall terminate upon: (1) Respondent's payment of any due civil penalty owed; (2) Respondent's written certification, and DEC's written verification, of timely completion of all the requirements in the Schedule of Compliance; and (3) the completion of the modification process of the SPDES permit as required by this Schedule of Compliance.

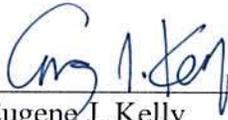
DATED: May , 2013
Rotterdam, New York

Joseph Martens
Commissioner

DATED: June 14, 2013
Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Village of Coxsackie

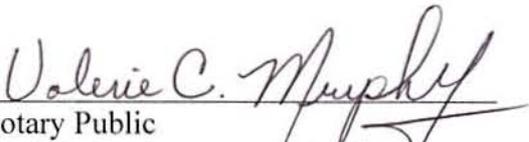
Respondent hereby consents to the issuing and entering of this Modification, waives its right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

BY:  TITLE: Mayor

DATE: June // , 2013

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

On the // day of June in the year 2013 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: GREENE
My Commission Expires: 12/18/2014

VALERIE C. MURPHY
Notary Public, State of New York
Commission No. 01MU6158144
Qualified in Greene County
Commission Expires: 12/18/2014

SCHEDULE OF COMPLIANCE

Sanitary Sewer Overflow Abatement and Elimination Plan Development

- 1) By July 1, 2014, Respondent shall compile all existing sewer system investigation information and data necessary to develop and submit a Sanitary Sewer Overflows Abatement and Elimination Plan (“Plan”) and any additional information required to comply with Paragraph 2. Any request for additional time to complete such work shall be submitted to the Department in writing prior to the compliance date for review and approval and it shall specifically list investigation tasks and the reasons for the delay(s). The final schedule and any approved extensions shall be enforceable under this Modification.

Implementation of Plan

- 2) The Plan shall be prepared by a Professional Engineer, licensed in and by the State of New York (“Professional Engineer”) and include an expeditious schedule and end date of no later than December 31, 2022. The Plan must include actions to be taken by the Respondent to eliminate all SSOs and to achieve continuous compliance with the Permit and must include elements found in the Department’s April 24, 2009 Guidelines for Sanitary Sewer Overflow Abatement Analysis. The Plan shall be a phased approach that includes, at a minimum, the following:
 - a) The completion of the following I/I reduction projects by December 31, 2012:
 - (i) Repair of the West Coxsackie Pump Station Outfall; and
 - (ii) Repair the ten manholes on Bailey, Cato, and Spencer Streets.
 - b) Remove the Bailey Street inflow source by no later than by June 1, 2013;
 - c) An analysis of the potential impact on compliance and SSO discharges of an expansion or upgrade of the WWTP;
 - d) An analysis of the potential impact on compliance and SSO discharges of the construction of equalization tank(s); and
 - e) An analysis of the potential impact on compliance and SSO discharges of the replacement and repair of portions of the collection system.

The approved Plan and its schedule shall become an enforceable part of this Modification upon Department approval.

Sewer Moratorium¹

3) No new sewer connections, extensions, or increases in flow shall be made to Respondent's sanitary sewer collection system until satisfactory completion of the Schedule of Compliance except as follows:

A. Interim Relief Based on On-Going I/I Work: The Department's review and approval of a Professional Engineer's certification that the I/I reduction projects identified in paragraph 2(a) above have been completed will allow the Department to approve the following projects as requested by the Respondent provided it makes an appropriate sewer extension request and seeks approval from the Department for the extensions pursuant to 6 NYCRR Part 750-2.10/(i):

- (i) McDonald's Restaurant on US Route 9W;
- (ii) Aaron Flach Property Ten housing units on Route 385;
- (iii) Greene County YMCA, State Route 81; and
- (iv) Greene County IDA identified economic development projects up to 10,000 gpd in discharges.

B. Continued Relief Based on Future I/I Work: The Modification continues the moratorium established in the Order and no new sewer connections, extensions, or increases in flow may be considered unless Department approved based on I/I reduction work and other measures in the Plan that have been completed and certified. An application in writing by Respondent for such relief shall be made to the DEC Region 4 Regional Water Engineer. Approvals under this subparagraph shall be based on the Division of Water Guidelines for Sanitary Sewer Overflow (SSO) Abatement Analysis dated April 24, 2009. No applications will be considered and no approvals granted unless the Respondent is in compliance with this Modification including the Plan, Schedule of Compliance; and the Quarterly Report requirements.

C. Application : A moratorium relief application shall be only submitted by the Respondent and shall include at a minimum:

- (i) A description of the quantity and type of wastewater to be introduced (estimates of new wastewater quantity shall be based on the expected hydraulic loading rates provided in the DEC Design Standards for Wastewater Treatment Works, 1988);
- (ii) An assessment of the capacity of the existing system to accept the proposed additional flow without overloading the WWTP or collection system; and

¹ Paragraph 2 of the Order's Schedule of Compliance imposed a Sewer Moratorium on the Respondent. The Order's Sewer Moratorium requirements are superseded by the Modification's Schedule of Compliance Paragraph 3.

(iii) A certification by a professional engineer of actions taken under the Plan including I/I removal that supports the granting of relief from the moratorium. The Department will notify the Respondent whether the application has been approved or disapproved.

D. Public Health Relief from Moratorium With prior written approval of the Department, new sewer connections, extensions or increases in flow not covered by subparagraphs (A) and (B) above may be granted by the Department upon application by the Respondent to eliminate existing or potential near term public health nuisances or hazards. The New York State Department of Health or local health officer must certify the existence of the public health nuisance or hazard prior to the application being submitted to the Department.

Asset Management Plan

4. By July 1, 2014, Respondent shall develop and maintain an Asset Management Plan (AMP) for its wastewater collection and treatment system for the period until compliance is achieved under this Modification. A copy of the AMP shall be provided to the Department upon request. The AMP shall include at a minimum the following items:

A. An inventory of assets (including both equipment and personnel);

B. An assessment of criticality and condition and lifespan of equipment under the full range of flows experienced in the collection system and the plant;

C. Ranking and prioritization of assets based on subparagraph B assessment; and

D. A capital improvement plan and schedule with full cost pricing covering the entire compliance period under this Modification.

The AMP shall be developed consistent with the U.S. EPA's April 2008 "Asset Management: A Best Practices Guide." The AMP shall reflect the activities identified in the Sanitary Sewer Overflow Abatement and Elimination Plan (the "Plan") that is prepared pursuant to Paragraph 1 of this Schedule of Compliance. Where the Plan proposes the replacement or significant capital upgrade of a major asset such as the wastewater treatment facility, the AMP need not include a detailed inventory or assessment of those components that will no longer be used after the upgrade/replacement. New or upgraded components will be included in the AMP once installed.

Private Property Inflow

5. If at any time, the Respondent discovers, through investigation, notification, or otherwise, that a privately owned portion of a customer service connection is a source of inflow to the collection system, the Respondent shall within 90 days of that discovery, notify the owner(s) of the connection that its connection is a source of inflow and the Respondent shall take action, consistent with the Respondent's legal authority to cause the removal of the inflow.

Permit Modification

6. Respondent agrees to a Department initiated modification of its SPDES permit to delete all references and requirements to and for CSOs and to insert all standard Department and U.S. EPA requirements for a publically owned treat plant with a separate sanitary sewer collection system including but not limited to standard language regarding the prohibition against sanitary sewer overflows.

Installation of Flow Meters

7. Within 60 days of the effective date of the Modification, Respondent shall install and maintain automatic flow meters (submersible level and velocity sensors equipped with a data logger) on West Coxsackie Pump Station, Reed Street and wastewater treatment plant overflow outfalls (SPDES permit Outfalls 1A, 2 and 8) and submit that information as required by its SPDES permit.

Interim I/I Removal Program

8. By December 1, 2013, Respondent shall submit an engineer's report to the Department that identifies interim I/I investigation and removal work to be conducted in calendar year 2014 including but not limited to manhole inspections and the elimination of the overflows at the Riverside Avenue Pump Station.