

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

**ORDER ON CONSENT**

- by -

File No. R4-2008-0911-136

Delhi Central School District

Respondent

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**WHEREAS:**

1. New York State and the Department of Environmental Conservation have jurisdiction to protect the waters of the State pursuant to Environmental Conservation Law (“ECL”) Article 17 and the State Pollutant Discharge Elimination System (“SPDES”) permit program.
2. Respondent, Delhi Central School District, owns the Delaware Academy, located at 2 Sheldon Drive, Delhi, New York (“facility”). Respondent does not have a SPDES permit for this facility.
3. On September 21, 2007, Department staff conducted an investigation at the facility and determined that Respondent had discharged paint equipment wastewater into the open storm drain in the facility’s bus shop, which then drains into the West Branch of the Delaware River (“West Branch”).
4. On August 4, 2008, Department staff noted soap suds in the West Branch in the vicinity of the facility. Department staff conducted an investigation at the facility and determined that the soapy discharge came from bus washing conducted near the open storm drain in the facility’s bus shop.
5. The West Branch of the Delaware River is a class C stream and is within the New York City watershed.
6. ECL 17-0501 provides that “it shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-301.”
7. ECL 17-701(a) provides that “it shall be unlawful for any person, until a written SPDES permit therefor has been granted...to make or cause to make or use any outlet or point source for

the discharge of sewage, industrial waste or other wastes or the effluent therefrom, into the waters of this state.”

8 Respondent’s discharge of wastewater via the bus shop storm drain without a SPDES permit is a violation of ECL 17-0501 and ECL 17-701(a).

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

10. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

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

I. In respect of the aforesaid violation, a civil penalty in the amount of ONE THOUSAND EIGHT HUNDRED SEVENTY FIVE DOLLARS (\$1,875) is hereby assessed against the Respondent. ONE THOUSAND DOLLARS (\$1,000) of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, EIGHT HUNDRED SEVENTY FIVE DOLLARS (\$875), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. 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. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for them.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. 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 the provisions hereof by Respondent, their directors, officers, employees, servants, agents, successors or assigns.

V. 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.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. 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

IX. This Order is deemed effective on the date signed by the Department.

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 may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

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, their agents, their servants, their employees, their successors and their assigns;

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

XII. 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 thirty (30) 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.

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

DATED: \_\_\_\_\_, 2008  
Rotterdam, New York

Alexander B. Grannis  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

\_\_\_\_\_  
Eugene J. Kelly  
Regional Director  
Region 4



## SCHEDULE OF COMPLIANCE

1. Within 14 days of the effective date of this Order, Respondent shall retain the services of a professional engineer licensed to practice in New York State to conduct a site and wastewater evaluation.
2. Within 60 days of the effective date of this Order, Respondent shall submit the following to the Department:
  - A SPDES permit application and associated engineering report. The engineering report shall include a schedule for the design and construction of a new wastewater treatment and disposal system. The schedule shall include a construction completion date of no later than September 8, 2009.
  - Documentation identifying that the potential to discharge wastewater to groundwater and surface water via the facility's bus shop storm drain has been eliminated and that alternative procedures and/or a new location for bus washing are in place.