

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of 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

**FIFTH MODIFICATION OF  
ORDER ON CONSENT**

- by -

File No.R4-2000-1013-125M5

Town of East Greenbush

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 and applicable regulations.

2. Respondent is subject to Order on Consent R4-2000-1013-125 (effective December 19, 2000) (“2000 Order on Consent”). The Order was subsequently modified on May 9, 2001 (“Modification”), May 22, 2002 (“Second Modification”), October 29, 2003 (“Third Modification”) and July 24, 2006 (“Fourth Modification”). Respondent was required to complete improvement projects to the wastewater treatment plant in accordance with the Schedule of Compliance contained in the Fourth Modification.

3. By correspondence dated September 11, 2008, Respondent has requested an extension to the time frames set forth in the Fourth Modification’s Schedule of Compliance. The Department finds good cause for granting Respondent’s request.

4. Respondent has affirmatively waived their right to a hearing in the manner provided by law and has consented to the issuing of this Fifth Modification and has agreed to be bound by the terms, provisions, and conditions contained herein.

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

I. In respect of the aforesaid violations, a civil penalty in the amount of TWO THOUSAND DOLLARS (\$2,000) is hereby assessed against the Respondent. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Fifth Modification to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

II. Respondent shall comply with the Fifth Modification's Schedule of Compliance which is incorporated and made part of the terms, provisions, and conditions of this Fifth Modification and which supercedes the Schedule of Compliance contained in the 2000 Order on Consent and the First, Second, Third and Fourth Modifications.

III. The effective date of this Fifth Modification shall be the date it is signed by the Department.

IV. All terms, provisions, and conditions of the 2000 Order on Consent and the First, Second, Third and Fourth Modifications remain in effect unless expressly modified in this Fifth Modification.

DATED: \_\_\_\_\_, 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  
Town of East Greenbush

Respondent hereby consents to the issuing and entering of this Order, waives their 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) Within 30 days of the effective date of this Order, Respondent shall submit a schedule for the continuation of the Infiltration and Inflow (I/I) Reduction Program. The schedule shall include milestones for the completion of the I/I reduction priority projects listed in the I/I Assessment Report and addendum letter, approved by the Department on October 26, 2007, that have not been completed. The schedule shall also include milestones for the completion of all other I/I reduction projects on Respondent's priority list of identified problems as reference in the Respondent's September 2008 Summary Report. The schedule shall become an enforceable part of this Order following Department review and approval.
- 2) Within 30 days of the effective date of this Order, Respondent shall submit a separate schedule with milestones for the completion of the wastewater treatment plant (WWTP) upgrades listed in the Evaluation and Report on the Respondent Wastewater Treatment Facility, dated January 2007, that have not been completed. The schedule shall become an enforceable part of this Order following Department review and approval.
- 3) Within 30 days of the receipt of approval from Rensselaer County to proceed with the diversion of a portion of the WWTP influent to the Rensselaer County Sewer District (RCSD), Respondent shall submit to the Department a schedule for the diversion, which sets forth time frames for planning, design, and construction activities. The schedule shall become an enforceable part of this Order following Department review and approval. If the approval is not received from Rensselaer County by December 31, 2009, Respondent shall submit to the Department by January 31, 2009 a schedule for the expansion and upgrade of the WWTP, which sets forth time frames for planning, design, and construction activities. The schedule shall become an enforceable part of this Order following Department review and approval.
- 4) Until satisfactory completion of the Schedule of Compliance, no new sewer connections shall be made, except as follows:
  - A. New connections may be considered as work on I/I removal pursuant to the Schedule of Compliance progresses. Application in writing for such relief shall be made to the Regional Water Engineer. The Department will either approve or disapprove such application in writing. For measured reductions in inflow, one gallon of new wastewater will be authorized for every four gallons of inflow removed. For estimated reductions in inflow, one gallon of new wastewater will be authorized for every ten gallons of inflow removed. For infiltration reduction, a case-by-case evaluation will be conducted and a determination made as to whether relief from the moratorium may be granted.
  - B. With prior written approval of the Department, new connections not covered by subparagraph (A) above, may be allowed up to an estimated total of 100,000 gallons per day (GPD) due to the closure of two industrial users in the Town (Fuji Film & Albany International). Approvals under this subparagraph will only be given if milestones on the approved schedule for work on I/I removal pursuant to the Schedule of Compliance, paragraph (1) are being met. Estimates of wastewater flow shall be based on the expected hydraulic loading rates provided in the DEC Design Standards for Wastewater Treatment Works, 1988. The use of the Fuji Film or Albany International sites by new

tenants shall also count against this total. Building lots approved by the Town Planning Board prior to the effective date of this Modification will not count against this total if documentation is provided indicating the approval date.

C. With prior written approval of the Department, other new connections not covered by subparagraph (A) or (B) above, to eliminate existing potential public health nuisances or hazards will be allowed.

D. The burden shall be on the Respondent to demonstrate the I/I reductions achieved as required by subparagraph (A) above.

E. An annual report shall be submitted to the Department by January 15th of each year listing each new connection or vacant property re-occupied during the previous year. The report must also indicate the estimated wastewater flow and the I/I removed if allowed under subparagraph (A) above.

5) Compliance with the terms and conditions of this Schedule of Compliance shall not be a defense to subsequent violations of the SPDES permit.