

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. R4-2008-1114-161

Town of Greenport
600 Town Hall Drive
Hudson, NY 12534

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, Town of Greenport, is a municipality of the State of New York which operates a waste water treatment plant ("WWTP") located at 600 Town Hall Drive, Hudson, New York ("site"). The WWTP is regulated by State Pollutant Discharge Elimination System permit No. NY-0030988 ("permit"). The permit authorizes the discharge of treated wastewater to the Claverack Creek (class "C") through outfall 001. The permit requires, among other things, the monitoring of the WWTP discharge and the submittal of discharge monitoring reports ("DMRs") which summarize monitoring data on a monthly basis. Paragraph 4 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, Carbonaceous, 5-day, 30-day arithmetic average	138 lb./day	March 2008 February 2008 April 2007	204 lb./day 260 lb./day 139 lb./day
BOD, Carbonaceous, 5-day, 7-day arithmetic average	220 lb./day	March 2008 February 2008	313 lb./day 453 lb./day
BOD, Carbonaceous, 5-day, Percent Removal	85 Percent	March 2008 February 2008	84 Percent 84 Percent
Flow, in conduit 30-day arithmetic average	0.83 MGD	February 2008 April 2007 March 2007	0.926 MGD 1.162 MGD 1.456 MGD
Nitrogen, Ammonia, Total As (NH ₃)	13 mg/L	July 2008 June 2008 October 2007 September 2007 July 2007	16.7 mg/L 13.6 mg/L 14.1 mg/L 15 mg/L 16.9 mg/L
Solids, Suspended Percent Removal	85 Percent	August 2008 June 2008 February 2008 March 2008 August 2007 July 2007 May 2007 April 2007	84 Percent 84 Percent 73 Percent 74 Percent 72 Percent 84 Percent 80 Percent 78 Percent
Solids, Total Suspended 30-day arithmetic average	165 lb./day	March 2008 February 2008 April 2007	447 lb./day 372 lb./day 219 lb./day
Solids, Total Suspended 7-day arithmetic average	248 lb./day	March 2008 February 2008 April 2007	789 lb./day 669 lb./day 270 lb./day
Solids, Total Suspended 30-day arithmetic average	30 mg/L	March 2008 August 2007	44 mg/L 34 mg/L
Solids, Total, Suspended 7-day arithmetic average	45 mg/L	March 2008	78 mg/L
Lack of compliance with Order on Consent (R4-2001-0206-27M2)	Construction of improvements to begin in June 2008	Not Applicable	No construction related activities noted as of November 2008

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 FOURTEEN THOUSAND SEVEN HUNDRED DOLLARS (\$14,700) is hereby assessed against the Respondent of which THREE THOUSAND DOLLARS (\$3,000) 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 (\$11,700) 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 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.

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, his 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, and shall constitute sufficient grounds for revocation of any permit, license, certification or approval issued to Respondent by DEC.

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: _____, 2008
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 Greenport

Respondent hereby consents to the issuing and entering of this Order on Consent, 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:

COMPLIANCE SCHEDULE

Respondent shall:	Due Date
I. Submit the construction schedule for the planned physical improvements to the plant, including the date for startup of disinfection equipment (temporary or permanent). Please be advised that the Department will not approve the schedule with any substantial construction activities extending beyond September 30, 2009, including disinfection. Once approved by Department, the schedule will become enforceable under this Order.	On or before November 28, 2008
II. Submit the final Facility Report and Engineering Plans for approval by the Department's Bureau of Water Permits. Once approved by Department, the report and plans will become enforceable under this Order.	On or before November 28, 2008
III. An interim limit for flow (monitor only), total nitrogen as NH ₃ (16 mg/L), and percent removal for TSS (74%) shall be in effect until the plant improvements are fully complete and six months of normal plant operation.	No later than April 1, 2010

SEWER MORATORIUM

There shall be a moratorium on any or all new connections, expansions or increases of flows to the Town of Greenport WWTP. The moratorium shall be subject to the following constraints:

- i) The moratorium shall remain in effect until the Town can demonstrate the successful completion of the upgrades as identified in schedule of compliance listed above.
- ii) Limited relief from the moratorium may be allowed to eliminate an existing or potential public health nuisance or hazard. Application for such relief shall be made to the Department. Such application shall include, at a minimum, a description of the quantity 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. Department will either approve or disapprove such application in writing.
- iii) In certain cases where economic hardship can be clearly demonstrated, relief can also be considered.