

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
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

Fourth Modification of
ORDER ON CONSENT

DEC Case Number
R4-2165-99-04 (Margaretville WPCP)

- by -

City of New York Department of
Environmental Protection (NYCDEP)

Respondent

WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation ("DEC" or the "Department") is the State agency with jurisdiction over the environmental law and policy of the State pursuant to § 3-0301 of the Environmental Conservation Law (ECL). 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, NYCDEP, owns and operates a Water Pollution Control Plants ("WPCP") in the Village of Margaretville which is subject to SPDES permit numbers NY 0026531.
3. Respondent is subject to the Third Modification of the Order on Consent (effective date September 12, 2007).
4. On June 17, 2008, Respondent requested an extension until September 8, 2008 to the Third Modification's Schedule of Compliance Paragraph 1 requirement: *"The holding tank and related equipment shall be operational by June 15, 2008."* The Department acknowledges that on March 19, 2008 it unilaterally extended this milestone until June 29, 2008 to allow the additional time it needed for its review of the Respondent's engineering plans.
5. Respondent violated the Third Modification's Schedule of Compliance Paragraph 1 by failing to have the holding tank and related equipment operational by the extended deadline of June 29, 2008.

6. Respondent hereby affirmatively waives its right to notice and hearing in the manner provided by law and consents to the issuing and entering of this Fourth Modification and agrees 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 violation of Paragraph 3 of the Third Modification's Schedule of Compliance, Respondent is hereby assessed a civil penalty in the amount of NINETY NINE THOUSAND DOLLARS (\$99,000). FIFTY THOUSAND DOLLARS (\$50,000) of the civil penalty shall be paid within 60 days of NYCDEP's receipt of the Department^{sssss}² occurs at the Margaretville WPCP prior to the installation of the holding tank and its related equipment as required in Paragraph 1 of the Schedule of Compliance and that based upon reasonable engineering judgment such bypass would have been prevented if the holding tank was installed at the time of said bypass. Respondent shall pay the suspended civil penalty to the Department within 60 days of receipt of a Notice of Violation setting forth the basis for the notification

II. Respondent shall comply with the Fourth Modification and the Schedule of Compliance attached hereto (the "Schedule of Compliance") which is incorporated into this Fourth Modification and which supercedes the Third Modification's Schedule of Compliance.

III. Pursuant to ECL Section 17-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

IV. This Fourth Modification is binding upon the Respondent, its agents, its employees, its successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. 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

sssss

² See 6 NYCRR Part 750-2.8(b)

For Respondent:
Chief Wastewater Operations
Bureau of Water Supply
New York City Department of Environmental Protection
POB 358
7870 Route 42
Grahamsville, New York 12740
845-985-7175

(Copy to Counsel: Linda Geary , New York City Law Department, 71 Smith Avenue
Kingston, NY 12401)

VI. The terms and conditions of the Schedule of Compliance may be delayed or modified if the Respondent cannot comply with the terms of this Fourth Modification because of an act of God, war, strike or other condition as to which conduct on the part of the Respondent or its consultant, contractor or agent was not the proximate cause; provide, however, that the Respondent notifies the Department in writing within *twenty (20)* days of obtaining knowledge of any such condition and requests an appropriate extension or modification of the Schedule of Compliance.

VII. No change or modification to this Fourth Modification shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

VIII. For the purpose of insuring compliance with this Fourth Modification, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith. Such representatives shall comply with all health and safety requirements applicable to the site.

IX. The Effective Date of this Fourth Modification shall be the date upon which it is signed on behalf of the Department by the Region 4 Regional Director.

X. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless 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 of this Fourth Modification by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XI. The Fourth Modification shall terminate upon Respondent's complete compliance with all the terms, provisions and conditions of this Fourth Modification.

XII. The Fourth Modification shall be considered in full settlement of the violation identified in Paragraph 5. The Department shall not institute any action or proceeding for penalties or other relief for such violation other than as provided for in this Fourth Modification.

DATED: October ____, 2008
Rotterdam, NY

ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

BY:

EUGENE J. KELLY
REGIONAL DIRECTOR
REGION 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Fourth Modification, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

New York City Department
of Environmental Protection

By: _____

ROBIN M. LEVINE
GENERAL COUNSEL
NEW YORK CITY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

ACKNOWLEDGMENT

State of New York)

ss:

County of Queens)

On this day of , 2008, before me personally came Robin M. Levine, to me known, who being by me duly sworn did depose and say that she resides in Brooklyn, New York, that she is the General Counsel of the New York City Department of Environmental Protection, the municipal agency described in and which executed the foregoing instrument, and that she signed her name as authorized by said municipal agency.

Notary Public

SCHEDULE OF COMPLIANCE

1. Respondent shall by September 30, 2008 fully construct and have completely operational the holding tank and related equipment as per the plans as approved by this Department on March 19, 2008.
2. Respondent shall by no later than January 30, 2012 shall fully construct and have completely operational the microfiltration units and related equipment as per the plans submitted by NYCDEP and approved by this Department on March 19, 2008.