

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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CERTIFIED - RETURN RECEIPT REQUESTED
7011 1570 0003 0363 4038

February 19, 2016

David A. Engel
Nolan & Heller, LLP
39 North Pearl Street
Albany, NY 12207

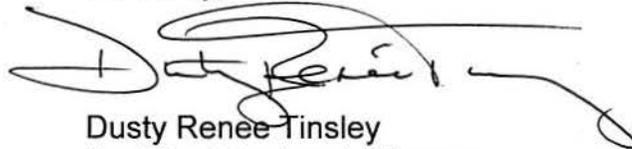
Re: Order of Consent
R4-2013-1105-133M
Ronald Schaefer

Dear Mr. Engel:

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

This will also acknowledge receipt of \$12,000 1st of 3 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$12,000 is due on or before March 18, 2016.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: K. O' Connor

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Violation of
Article 17 of the Environmental
Conservation Law (ECL) 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")**

DEC Case
R4-2013-1105-133M

By

Ronald Schaefer,

Respondent.

----- X
WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation ("DEC" or "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 water resources of the State, pursuant to ECL Article 17 and the rules and regulations promulgated there under at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), Part 750, et seq.

RESPONDENT

2. French Woods Performing Arts Camp, Inc., is a Florida corporation doing business in New York through its ownership/operation of a residential performing arts camp located at 350 Bouchoux Brook Road, Hancock, Delaware, New York ("Facility").

3. Respondent Ronald Schaefer, with an address of P.O. Box 770100, Coral Springs, FL 33071, is the permit holder for State Pollutant Discharge Elimination System ("SPDES") permit #4-1236-00021/00001 ("Permit") that governs the operation of the wastewater treatment system at the Facility. The Permit refers to the Facility as "Camp French Woods".

ORDER ON CONSENT

4. Respondent entered into an Order on Consent (R4-2013-1105-133) effective December 9, 2013 ("Order") addressing violations of Article 17 of the ECL, 6 NYCRR, and the Permit.

FIRST AND SECOND VIOLATIONS

5. The Order required the continuous operation of phosphorus controls for waste water treatment during the 2014 Facility camp season and an engineering assessment to address whether the Facility's phosphorus removal system needed upgrading. The recommendations of the engineering report were incorporated in and became a part of the Order.
6. The engineering report recommended a new phosphorus treatment system using Sodium Aluminate injection.
7. The Order required that "By no later than April 1, 2015, Respondent shall complete the construction of Department approved necessary upgrades to the [F]acility and provide an engineering certification verifying completion according to Department approved plans." The new phosphorus treatment system using Sodium Aluminate injection was therefore required to be operational no later than April 1, 2015 prior to the 2015 Facility camp season.
8. The Facility 2015 camp season opened on June 8, 2015.
9. Phosphorus treatment did not start at the Facility until early July of 2015.
10. When phosphorus treatment did start at the Facility in early July of 2015, the Facility's waste water treatment system pump malfunctioned after one day. An undersized pump was installed at the waste water treatment plant which could not inject chemical at an adequate dose.
11. On August 18, 2015, Respondent installed a new wastewater treatment plant pump at the Facility and adequate chemical addition began.
12. Respondent failed to complete the construction of Department approved necessary upgrades to the Facility and provide an engineering certification verifying completion according to Department approved plans by April 1, 2015.
13. Respondent's failure to complete the construction of Department approved necessary upgrades to the Facility and provide an engineering certification verifying completion according to Department approved plans by April 1, 2015 is a violation of the Order.
14. Respondent failed to maintain continuous operation of phosphorus controls during the 2014 season as required by the Order.
15. Respondent's failure to maintain continuous operation of phosphorus controls during the 2014 season as required by the Order is a violation of the Order.

THIRD AND FOURTH VIOLATIONS

16. The Permit states that pH must be monitored once per week by effluent grab sample.
17. Respondent failed to conduct pH sampling.
18. Respondent's failure to monitor for pH as required by the Permit are violations of the Permit.
19. The Permit states that the "monitoring information required by this permit shall be summarized, signed and retained for a period of three years from the date of the sampling for subsequent inspection by the Department of its designated agent. Also, monitoring information required by this permit shall be summarized and reported by submitting . . . completed and signed Discharge Monitoring Report (DMR) forms for each 1 month reporting period to the locations specified below [and] a monthly "Wasterwater Facility Operation Report . . . to the Regional Water Engineer".
20. Respondent failed to complete, maintain, and submit required documentation of pH monitoring.
21. Respondent's failure to complete, maintain, and submit required documentation of pH monitoring are violations of the Permit.

FIFTH VIOLATION

22. The Permit states that Respondent is to monitor chlorine (total residual).
23. Respondent failed to conduct chlorine (total residual) monitoring. Rather, Respondent conducted free chlorine testing.
24. Respondent's failure to conduct chlorine (total residual) monitoring are violations of the Permit.

SIXTH VIOLATION

25. ECL §17-0701(1)(a) states that "It shall be unlawful for any person . . . 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"
26. ECL § 17-0807(4) states that "The following discharges into the waters of the state are hereby prohibited. . . . 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."

27. 6 NYCRR Part 750-1.4(a) states that “(a) Except as provided in section 750-1.5(a) of this Subpart, no person shall discharge or cause a discharge of any pollutant without a SPDES permit having been issued to such person pursuant to this Part and ECL article 17, title 7 or 8, with respect to such discharge; and no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit.”

28. Respondent’s Daily Monitoring Reports (“DMRs”) for June 30, 2014 through September 30, 2015 contained the following violations of its Permit effluent discharge limits:

<u>Parameter</u>	<u>Date</u>	<u>Limit</u>	<u>Actual Value</u>
Chlorine, total residual	06/30/2014	.5 mg/L DAILY MX	1.77 mg/L
Coliform, fecal general	06/30/2014	400. #/100mL 7 DA GEO	565 #/100mL
Flow rate	06/30/2014	.048 MGD DAILY MX	.057111 MGD
Chlorine, total residual	07/31/2014	.5 mg/L DAILY MX	1.8 mg/L
Coliform, fecal general	07/31/2014	400. #/100mL 7 DA GEO	712.5 #/100mL
Flow rate	07/31/2014	.048 MGD DAILY MX	.056661 MGD
Phosphorus, total [as P]	07/31/2014	1. mg/L MO AVG	3.24 mg/L
BOD, 5-day, 20 deg. C	08/31/2014	8. lb/d 7 DA AVG	13.5 lb/d
Flow rate	08/31/2014	.048 MGD DAILY MX	.05496 MGD
Phosphorus, total [as P]	08/31/2014	1. mg/L MO AVG	4.9 mg/L
Solids, total suspended	08/31/2014	8. lb/d 7 DA AVG	10.5 lb/d
Chlorine, total residual	06/30/2015	.5 mg/L DAILY MX	2.2 mg/L
Flow rate	06/30/2015	.048 MGD DAILY MX	.072 MGD
Phosphorus, total [as P]	06/30/2015	1. mg/L MO AVG	3.2mg/L
Solids, total suspended	06/30/2015	8. lb/d 7 DA AVG	14.9 lb/d
Solids, total suspended	06/30/2015	20. mg/L 7 DA AVG	50.2 mg/L
Chlorine, total residual	07/31/2015	.5 mg/L DAILY MX	2.2 mg/L
Coliform, fecal general	07/31/2015	200. #/100mL 30 DA GEO	440 #/100mL
Coliform, fecal general	07/31/2015	400. #/100mL 7 DA GEO	440 #/100mL
Flow rate	07/31/2015	.048 MGD DAILY MX	.064 MGD
Phosphorus, total [as P]	07/31/2015	1. mg/L MO AVG	4.11 mg/L
Chlorine, total residual	08/31/2015	.5 mg/L DAILY MX	2.2 mg/L
Flow rate	08/31/2015	.048 MGD DAILY MX	.051 MGD
Phosphorus, total [as P]	08/31/2015	1. mg/L MO AVG	3.33 mg/L
Chlorine, total residual	09/30/2015	.5 mg/L DAILY MX	2.2 mg/L
Phosphorus, total [as P]	09/30/2015	1. mg/L MO AVG	2.23 mg/L

29. Respondent’s violation of the Permit effluent limits contained in Paragraph 28 above are violations of the Permit.

CIVIL PENALTY

30. The Order provided for a civil penalty for the violations contained therein in the amount of fifty eight thousand dollars with twelve thousand dollars due and payable to the Department at the time the Order was submitted in signed and executed form. Forty six thousand dollars of the civil penalty payment was suspended conditioned on Respondent’s compliance with the Order and states that “Payment of the suspended

penalty shall be due with[in] fifteen (15) calendar days of the receipt by the Respondent of a notice of violation from the Department which sets out the violations of the Order.”

31. The Department sent Respondent a November 20, 2015 letter setting out the violations of the Order.

32. ECL §71-1929 provides for the following civil penalties: “A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under, shall be liable for a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.

WAIVER OF HEARING

33. Respondent has affirmatively waived his 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 THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. **Civil Penalty.** In respect to the violations set forth in the Order as well as the new violations set forth in the Modification, a civil penalty of FORTY SIX THOUSAND DOLLARS (\$46,000) is assessed against the Respondent for the above violations. THIRTY SIX THOUSAND DOLLARS (\$36,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check in three installments as follows: \$12,000 at the time this Modification is signed and notarized and returned to the Department; \$12,000 within 30 days of the effective date of this Modification, and \$12,000 within 30 to 60 days of the effective date of this Modification. TEN THOUSAND DOLLARS (\$10,000) of the civil penalty is suspended conditioned on Respondent’s compliance with the Modification’s Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

Respondent agrees to the terms contained in Appendix A to the Modification in consideration of paying the civil penalty in installments. Appendix A is incorporated into the Modification and is enforceable thereunder.

Payment of the above penalties shall not in any way alter Respondent’s obligation to complete performance under the terms of this Modification.

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Modification including the Schedule of Compliance. The Schedule of

Compliance in the Modification supersedes the Schedule of Compliance in the Order. The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Modification and are enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact and phone number.

III. **Settlement.** This Modification settles all violations identified herein as of the effective date of the Modification.

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

V. **Summary Abatement.** This Modification shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Indemnification.** 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 hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

VII. **Modification.** The provisions of this Modification constitute the complete and entire Modification issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding, or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound pursuant to the provisions of the Modification. No informal oral or written advise, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain such formal approvals as may be required by this Modification.

VIII. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Modification, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Modification shall be the date upon which it is signed on behalf of the Department.

X. **Scope.** Except as specifically provided in this Modification, nothing contained in this Modification 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 or Department may have against Respondent for any violations not cited in this Modification.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Modification against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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 Modification and whether or not this Modification has been entered into voluntarily by Respondent.

XI. Review of Submitted Documentation. 1. All documents which Respondent must submit pursuant to this Modification are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Modification 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 Modification 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 submittals shall be incorporated into and become an enforceable part of this Modification; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3.a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent

in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Modification. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Modification.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Modification or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

XII. **Default.** Respondent shall not be in default of compliance with this Modification if they are unable to comply with any provision of this Modification solely because of an action of a national government or court, or an act of nature, war strike, riot, or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify the Department in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

XIII. **Communications.** Communications shall 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

For Respondent:

Ronald Schaefer
1879 N. University Drive
Coral Springs, Florida 33071

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: February 18, 2016
Rotterdam, New York

Basil Seggos
Acting Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

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

BY: [Signature]

TITLE: Pres

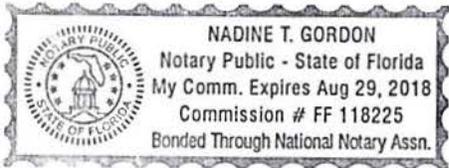
DATE: 2/9/16

STATE OF Florida
COUNTY OF Broward) ss.:

On the 5 day of February in the year 2016 before me, the undersigned, a Notary Public in and for the State of Florida, personally appeared Ronald Schaefer, 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.

[Signature]
Notary Public

My commission expires:



SCHEDULE OF COMPLIANCE

1. By March 25, 2016, Respondent shall submit to the Department an approvable engineering report and plans prepared by a NYS licensed professional engineer for the upgrade of the existing wastewater treatment system and replacement of the existing wastewater treatment system ("Report").

The Report shall include the following:

- a. Occupancy numbers for both overnight campers and day use (particularly during events) to determine if additional wastewater treatment system capacity is necessary;
- b. A detailed plan for evaluating Inflow and Infiltration (I/I);
- c. Discussion of the seasonal nature of the Camp French Woods and how to maximize wastewater treatment during the camp season;
- d. A seasonal start up plan for the existing and/or replacement wastewater treatment system;
- e. A completed Water Treatment Chemical (WTC) form with descriptive toxicity data (acute and chronic) for vertebrate and invertebrate species;
- f. A plan and schedule for maximizing the operation of the existing treatment plant by June 1, 2016, including phosphorus treatment and disinfection, to ensure compliance with the Permit until upgrade or replacement of the existing wastewater treatment system is complete; and
- g. A plan and schedule for replacing the existing wastewater treatment system by April 1, 2017.

2. By May 1, 2016, Respondent shall retain a certified operator with a license at or above the grade level required for the Facility's wastewater treatment system. The certified operator will spend a minimum of two hours per day at the Facility's wastewater treatment system completing the necessary operation, maintenance, sampling, inspection, and recordkeeping in accordance with the SPDES Permit and Part 750 requirements. Additional help shall be made available when needed to conduct more complicated maintenance or replacement of Facility's wastewater treatment system equipment.

3. By May 1, 2016, Respondent shall submit to the Department a complete permit modification application for the Facility's new wastewater treatment system.

4. By June 1, 2016, Respondent shall implement the Report's schedule for maximizing the operation of the existing treatment plant.

5. By July 1, 2016, Respondent shall implement all recommendations arising from the I/I evaluation completed by Respondent.
6. By April 1, 2017, Respondent shall complete construction of the new wastewater treatment system as provided for in the Report.
7. Respondent shall return to the Department with the signed and notarized Order as well as the first installment of the civil penalty payment a completed copy of the attached Appendix A Tax Information Form and Statewide Offset Program Notice which shall become a part of this Modification.