

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

**ORDER ON CONSENT**  
File No. R4-2009-0227-49

- by -

City of Troy

Respondent

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WHEREAS:

1. The Department has jurisdiction in all matters pertaining to the protection of the water quality of the State pursuant to ECL Article 17.

2. Respondent, City of Troy, owns and operates a water treatment plant. The water treatment plant discharges wastewater pursuant to a State Pollutant Discharge Elimination System ("SPDES") permit (#NY 020 5401). The SPDES permit sets effluent discharge limits for pollutants expected in the wastewater generated during water treatment operations. Respondent utilizes a lagoon system to treat this wastewater.

3. The following SPDES permit effluent discharge limit violations have been noted for 2008:

**Violation Summary:**

**Violations of the Effluent Limitation for TOTAL MANGANESE (Daily Avg. of 2 mg/l) at Outfall No. 003**

<b>DATE (month / year)</b>	<b>REPORTED VALUE (mg/l)</b>
1 / 2008	3.1
2 / 2008	5.4
3 / 2008	3.3
4 / 2008	2.9
7 / 2008	2.9
8 / 2008	2.48
10 / 2008	3.9
11 / 2008	4.2

**Violations of the Effluent Limitation for TOTAL MANGANESE (Daily Max. of 4 mg/l) at  
Outfall No. 003**

<b>DATE (month / year)</b>	<b>REPORTED VALUE (mg/l)</b>
1 / 2008	4.5
2 / 2008	5.5
3 / 2008	6.0
4 / 2008	5.4
7 / 2008	5.2
10 / 2008	5.6
11 / 2008	7.2

**Violations of the Effluent Limitation for SETTLEABLE SOLIDS (Daily Max. of 0.1 ml/l) at  
Outfall No. 003**

<b>DATE (month / year)</b>	<b>REPORTED VALUE (ml/l)</b>
1 / 2008	0.8
3 / 2008	0.15
4 / 2008	5
11 / 2008	1.7

4. ECL 17-0511 states that “the use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article.”

5. The effluent discharge limit violations cited in Paragraph 3 above are violations of ECL 17-0511.

6. 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.

7. 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 violations, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) is hereby assessed against the Respondent. FIVE HUNDRED DOLLARS (\$500) 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, FIVE HUNDRED DOLLARS (\$500), 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:

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.

XI. 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.

XII. 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: \_\_\_\_\_, 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  
City of Troy

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 the Order, the Respondent shall submit for Department review and approval, a plan and schedule for the removal of sludge from the lagoon system that will minimize violations of the SPDES permit effluent limitations due to the capacity of the lagoon system. The plan must indicate the measures that will be taken during the sludge removal activities to minimize violations of the SPDES permit effluent limitations. The schedule must provide milestones indicating when sludge removal activities will begin and when adequate lagoon capacity will be achieved. The plan and schedule will become an enforceable part of this Order following Department review and approval.
- 2) The following interim effluent limitations (95<sup>th</sup> percentile of the 2008 reported values) shall apply beginning on the effective date of the Order until the approved schedule indicates that adequate lagoon capacity will be achieved:

PARAMETER	INTERIM EFFLUENT LIMITATIONS	
	Limitation	Units
Manganese, Total (Daily Avg.)	4.7	mg/l
Manganese, Total (Daily Max.)	6.5	mg/l
Solids, Settleable (Daily Max.)	3.0	ml/l