

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

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In the Matter of the Alleged Violation  
of Article 17 of the New York  
State Environmental Conservation  
Law, and Part 750 of Title 6 of the  
Official Compilation of Codes, Rules  
and Regulations of the State of New  
York,

**ORDER**

VISTA #R6-20041230-76

- by -

**FRANK LOCCISANO and  
PARADISE MOUNTAIN MOBILE HOME PARK, INC.,**

Respondents.

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Staff of the Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding against respondents Frank Loccisano and Paradise Mountain Mobile Home Park, Inc. ("respondents") to address the alleged violation of article 17 of the Environmental Conservation Law ("ECL") and part 750 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"). Staff commenced the proceeding by service of a notice of motion for order without hearing dated July 20, 2007, with supporting papers, in lieu of a notice of hearing and complaint, pursuant to 6 NYCRR 622.12.

Respondent Frank Loccisano is president of respondent Paradise Mountain Mobile Home Park, Inc. which owns and operates a mobile home trailer park located at Hulser Road, Town of Trenton, Oneida County, New York (the "site"). The site includes a sewage collection and treatment system (the "facility"). During the period that Department staff has identified for purposes of establishing violations related to the facility, respondent Loccisano was directly in charge of the facility.

Specifically, Department staff's motion for order without hearing alleged that respondents are in violation of ECL 17-0803 and 6 NYCRR 750-1.4 for discharging sewage from the facility without a state pollutant discharge elimination system ("SPDES") permit into an unnamed tributary of Nine Mile Creek, a Class D stream of New York State. For the violations alleged, staff seeks a civil penalty in the amount of \$300,000, of which \$149,000 would be suspended on the condition that respondents,

among other things, obtain an engineering report to assess the wastewater facility, repair the facility in accordance with the plan including the correction of infiltration/inflow into the sanitary collection system, and commit funds to the repair and maintenance of the facility. Respondents filed a response and other papers in response to staff's motion. Department staff was granted permission to file a sur-reply which was received on October 29, 2007.

Department staff's motion, respondents' submissions filed in response thereto, and Department staff's sur-reply were provided to the Department's Office of Hearings and Mediation Services. The matter was assigned to Administrative Law Judge ("ALJ") Helene Goldberger, who prepared the attached hearing report. I hereby adopt ALJ Goldberger's report, in part, as my decision in this matter, subject to the following comments.

The evidence submitted by Department staff in support of its motion establishes that the SPDES permit associated with respondents' facility expired in 2006. Respondents have failed to provide any information to dispute that the facility has been discharging without a permit since that time. Where, as here, a motion for order without hearing is contested, it will be granted if, upon all the papers and proof filed, the cause of action or defense is established sufficiently to warrant granting summary judgment under the CPLR in favor of any party (see 6 NYCRR 622.12[d]).

In view of the documentary evidence submitted by Department staff in its papers, the record demonstrates that staff carried its burden of making a prima facie showing of entitlement to summary judgment as a matter of law with respect to each violation alleged, and that respondents failed to raise a triable issue of fact requiring a hearing. Accordingly, Department staff is entitled to an order without hearing, as recommended by the ALJ.

The ALJ recommends that the penalty requested by Department staff be imposed, but concludes that the payable portion of the penalty should be ordered to be paid on a schedule "so that the respondents can simultaneously address the facility's upgrade and pay penalties" and that staff should be authorized to establish this schedule (Hearing Report, at 20).

The penalty requested is significant and fully warranted under the circumstances. With respect to a payment schedule, I concur with the ALJ that, in the circumstances of this case, a payment schedule is appropriate (in lieu of requiring that the

entire penalty be paid at once). Such a schedule, however, should be established in this order to clearly delineate the obligations that respondents must satisfy.

As noted, Department staff requested a penalty of \$300,000 of which \$149,000 would be suspended. I hereby determine that the non-suspended portion of \$151,000 shall be paid according to the following schedule: \$25,000 shall be due and payable within thirty (30) days of the service of this order upon respondents; and the remaining \$126,000 shall be due and payable in three subsequent installments of \$42,000 apiece. With respect to the three installments, \$42,000 shall be due by December 15, 2008, \$42,000 shall be due by April 15, 2009, and the final payment of \$42,000 shall be due by August 14, 2009. The payment schedule will allow respondents the opportunity at the outset to direct more of their financial resources to develop plans and undertake the necessary steps to upgrade the facility. However, should respondents fail to fully comply with conditions set forth in this order, the suspended portion of the penalty (\$149,000) shall become immediately due and payable to the Department.

Department staff requested various remedial measures in its motion for order without hearing. I conclude that the remedial measures requested are authorized and warranted, and the recommended dates including but not limited to the dates for the submission of the proposed engineering and other plans and for cessation of discharges in the event that a SPDES permit is not obtained for the facility are reasonable.<sup>1</sup>

**NOW, THEREFORE,** having considered this matter and being duly advised, it is **ORDERED** that:

I. Pursuant to 6 NYCRR 622.12, Department staff's motion for order without hearing is granted in part.

II. Respondents Frank Loccisano and Paradise Mountain Mobile Home Park, Inc. are adjudged to have violated ECL 17-0803 and 6 NYCRR 750-1.4 by utilizing a point source for the discharge of pollutants to the waters of the State without a permit since September 1, 2006 to July 20, 2007 (the date of staff's motion

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<sup>1</sup> I agree, however, with the ALJ that certain measures, such as the authority to add additional conditions to the SPDES permit for the facility (in addition to those specifically requested in the motion), are within the inherent authority of the Department and are unnecessary to be recited in this order (see Hearing Report, at 18 n5).

for order without hearing).

III. Respondents are hereby jointly and severally assessed a civil penalty in the amount of three hundred thousand dollars (\$300,000), of which one hundred forty-nine thousand dollars (\$149,000) shall be suspended on the condition that respondents fully comply with Paragraphs IV through X of this order. Payment of the non-suspended portion (\$151,000) shall be made in the form of a cashier's check, certified check or money order made payable to the order of the "New York State Department of Environmental Conservation" and mailed to the Department at the following address: Randall C. Young, Regional Attorney, New York State Department of Environmental Conservation, 317 Washington Street, Watertown, New York 13601, in accordance with the schedule set forth in Paragraph IV.

IV. Respondents shall make payment of the non-suspended portion of the civil penalty of one hundred fifty-one thousand dollars (\$151,000) according to the following schedule:

A. Twenty-five thousand dollars (\$25,000) shall be due and payable within thirty (30) days of the service of this order upon respondents; and

B. The remaining one hundred and twenty-six thousand dollars (\$126,000) shall be due and payable in three installments of forty-two thousand dollars in accordance with the following schedule:

1. The first installment of \$42,000 shall be due by December 15, 2008;
2. The second installment of \$42,000 shall be due by April 15, 2009; and
3. The third installment of \$42,000 shall be due by August 14, 2009.

Should respondents fail to fully comply with conditions set forth in Paragraphs IV through X of this order, the suspended portion of the penalty (\$149,000) shall become immediately due and payable and such suspended portion shall be submitted to the Department in the same form and manner as the non-suspended portion of the penalty.

V. No later than thirty (30) days after service of this order upon respondents, respondents must either cease discharging from the facility or submit an approvable application for a SPDES permit. An approvable application shall mean an application that can be approved by Department staff either as submitted by

respondent or subject to only minimal revision. As part of the application for the SPDES permit, in addition to other materials that may otherwise be required, the application must include:

- A. an engineering report regarding the physical condition of the collection system and treatment facility; a description of the repairs and upgrades that may be prudent or necessary to ensure all waste collected by the sewers on the premises receives full treatment in accordance with the facility's design; and an evaluation of the facility's ability to treat wastewater without bypassing;
- B. an implementation schedule for the repairs and upgrades identified in the engineering report;
- C. an engineering plan and implementation schedule to identify and reduce infiltration/inflow into the sanitary collection system and repair or replace corroded or failing components of the sewage treatment collection and disposal system. The plan must include a schedule indicating the funds to be expended each year for the project, the type of work to be done (including the approximate footage of sewer line to be evaluated and repaired and quantity of infiltration/inflow to be eliminated), the time frame for completing the project, the project's estimated cost and a surety bond to cover the cost of the project; and
- D. a plan and implementation schedule for routine maintenance of the facility including replacement dates for facility components and equipment and a proposed budget for implementation of the routine maintenance plan.

The measures identified in subparagraphs C and D of this Paragraph V shall be included as special conditions in any SPDES permit that Department staff may issue for the facility.

VI. No permit authorizing discharges from the facility shall be issued until (A) respondents retain a certified wastewater treatment plant operator pursuant to a contract for a term of at least two years; and (B) respondents complete measures to prevent bypassing and to ensure wastewater discharged from the facility will meet the standards and conditions of the permit that Department staff may prepare for the facility.

VII. No permit shall be issued to respondents for the facility unless respondents are able to demonstrate that the facility will meet all applicable statutory and regulatory standards.

VIII. Respondents shall comply with the interim conditions and limitations that were set forth in the Schedule to Department staff's motion for order without hearing, a copy of which is attached to this order.

IX. Respondent may not authorize or make any new connections to the collection system for the facility until a SPDES permit is issued for the facility.

X. Respondents must cease all discharges from the facility within one hundred twenty (120) days of the service of this order upon respondents unless they have obtained a SPDES permit for the facility from the Department.

XI. All communications from respondents to Department staff concerning this matter shall be made to Ronald J. Novak, P.E. Regional Enforcement Coordinator, New York State Department of Environmental Conservation, 317 Washington Street, Watertown, New York 13601.

XII. The provisions, terms and conditions of this order shall bind respondents Frank Loccisano and Paradise Mountain Mobile Home Park, Inc., and their heirs, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

/s/

By:

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Alexander B. Grannis  
Commissioner

Dated: Albany, New York  
August 12, 2008

TO: Frank Loccisano, President (By certified mail)  
Paradise Mountain Mobile Home Park, Inc.  
2434 Burnet Street  
Brooklyn, New York 11229

Frank Loccisano (By certified mail)  
2434 Burnet Street  
Brooklyn, New York 11229

Randall C. Young, Esq. (By ordinary mail)  
Regional Attorney  
New York State Department of  
Environmental Conservation  
Region 6  
317 Washington Street  
Watertown, New York 13601

ATTACHMENT  
Schedule

to the Department Staff's Motion for Order without Hearing

1. A monthly "Waste Water Facility Operation Report" (department form 92-15-7 or other approved form) must be submitted to the attention of the Regional Water Engineer by the fifth business day of each calendar month.
2. Monitoring must be conducted according to test procedures approved under 40 CFR 136 unless the Department approves other test procedures in writing.
3. If the Respondents monitor any pollutant more frequently than required, using test procedures approved under 40 CFR 136 or as approved by the Department, the results of such monitoring must be included in the calculations and recording of the data on the discharge monitoring report.
4. Calculation for all limitations which require averaging of measurements must utilize an arithmetic mean unless otherwise specified in writing by the Department.
5. Unless otherwise specified, all information recorded on the discharge monitoring report must be based on measurements and sampling carried out during the most recently completed reporting period.
6. Any laboratory test or sample analysis required by this permit for which the New York State Commissioner of Health issues certificates of approval pursuant to section five hundred two of the Public Health Law must be conducted by a laboratory which has been issued a certificate of approval.
7. All data gathered to demonstrate compliance and all reports prepared pursuant to this order must be retained at the facility for a period of five years and made available on request by Department staff.
8. Bypass of the tertiary wastewater treatment facility is prohibited. Bypass shall be considered a violation of this order and sections 17-0701 and 17-0803 of the Environmental Conservation Law.
9. The discharge from the distribution box to the tertiary treatment facility shall evenly distribute the wastewater flow to prevent hydraulic or organic overloading of the system.



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STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
625 Broadway  
Albany, NY 12233-1550

In the Matter

- of -

the Alleged Violations of Article 17 of the  
Environmental Conservation Law and Part 750  
of Title 6 of the New York Compilation of Codes, Rules  
and Regulations by:

**FRANK LOCCISANO and PARADISE MOUNTAIN MOBILE HOME PARK, INC.,**

Respondents.

VISTA No. R6-20041230-76

SUMMARY HEARING REPORT

- by -

/s/

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Helene G. Goldberger  
Administrative Law Judge

Proceedings

Department staff is represented by Randall C. Young, Regional Attorney of the Department's Region 6 office. The respondents are represented by Stuart E. Finer, Esq., Utica, New York.

On July 20, 2007, the New York State Department of Environmental Conservation (DEC or Department) staff commenced this enforcement proceeding by serving a notice of motion for order without hearing and supporting papers upon the respondents, Frank Loccisano and Paradise Mountain Mobile Home Park, Inc. (Paradise), by certified mail. In its motion for summary order, staff alleges that the respondents are in violation of Environmental Conservation Law (ECL) § 17-0803 and § 750-1.4 of Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) for discharging sewage without a state pollutant discharge elimination system (SPDES) permit into an unnamed tributary of Nine Mile Creek, a Class D stream of the state. On September 6, 2007, attorney Stuart Finer contacted Regional Attorney Young and advised him that he would be representing the respondents in this matter. The parties agreed to a deadline of September 28, 2007 for the respondents to serve their response.

On October 1, 2007, Chief Administrative Law Judge (CALJ) James T. McClymonds received a response dated September 27, 2007 from Mr. Finer on behalf of his clients. In Mr. Finer's cover letter, he requested additional time to submit certain further information in support of the respondents' position. In addition, Mr. Finer noted that Mr. Loccisano's affidavit was not notarized due to logistics.

By letter dated October 2, 2007, Mr. Young requested permission to submit a sur-reply to the respondents' September 2007 response. CALJ McClymonds e-mailed both parties on October 4, 2007 requesting that they confer and inform him of their positions on these two requests. By e-mail dated October 11, 2007, Mr. Young informed CALJ McClymonds that the parties had agreed to both requests.

By letter dated October 17, 2007, Mr. Finer submitted additional materials in support of his clients' position. By letter dated October 25, 2007, staff submitted its sur-reply.

With a cover letter dated October 31, 2007, Mr. Finer submitted the signed and notarized affidavit of Mr. Loccisano.<sup>1</sup>

The CALJ sent a letter to the parties dated October 29, 2007, informing them that this matter had been assigned to me as the ALJ.

In support of staff's motion, Regional Attorney Young submitted:

- 1) notice of motion for order without hearing dated July 20, 2007
- 2) motion for order without hearing dated July 20, 2007
- 3) brief dated July 20, 2007
- 4) affidavit of David E. Marcisofsky dated June 5, 2007 with the following exhibits:
- 5) application for SPDES permit dated September 28, 1981
- 6) SPDES permit dated September 27, 2001
- 7) application for permit transfer January 15, 2001 with permit transfer dated September 27, 2001
- 8) letter dated June 6, 2003 from James Witzel to David Marcisofsky
- 9) letter dated February 25, 2004 to residents of Windsong Mountain mobile home community from Robert Houle, GM
- 10) application for permit transfer dated January 11, 2007
- 11) letter dated January 8, 2007 from Frank Loccisano to DEC
- 12) letter dated October 5, 2003 from Steven J. Skowron, Windsong Mobile Home Park to David Marcisofsky, DEC with September 2003 wastewater facility operation report
- 13) letter dated November 1, 2003 from Steven J. Skowron to David Marcisofky, DEC
- 14) letter dated December 6, 2003 from Steven J. Skowron, Windsong Mobile Home Park to David Marcisofsky, DEC
- 15) letter dated January 1, 2004 from Steven J. Skowron, Windsong Mobile Home Park to David Marcisofsky, DEC with December 2003 wastewater facility report

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<sup>1</sup> In his letter of September 27, 2007, Mr. Finer explained that his client was in Brooklyn and therefore he could not present a signed and notarized affidavit. The affidavit submitted on October 31, 2007 was notarized by Mr. Jesus Perez. However, although the affidavit indicates that it was signed on October 30, 2007, the notary's signature appears under a declaration dated September 27, 2007.

- 16) letter dated April 4, 2004 from Steven J. Skowron, Windsong Mobile Home Park to David Marcisofsky, DEC with March 2004 wastewater facility report
- 17) letter dated May 2, 2004 from Steven J. Skowron, Windsong Mobile Home Park to David Marcisofsky, DEC with April 2004 wastewater facility report
- 18) letter dated June 6, 2004 from Steven J. Skowron, Windsong Mobile Home Park to David Marcisofsky, DEC with May 2004 wastewater facility report
- 19) letter dated August 1, 2004 from Steven J. Skowron, Windsong Mobile Home Park to David Marcisofsky, DEC
- 20) letter dated September 4, 2004 from Steven J. Skowron, Windsong Mobile Home Park to David Marcisofsky, DEC with August 2004 wastewater facility report
- 21) letter dated November 10, 2004 from Steven J. Skowron, Windsong Mobile Home Park to David Marcisofsky, DEC with October 2004 wastewater facility report
- 22) letter dated November 29, 2004 Steven J. Skowron, Windsong Mobile Home Park to David Marcisofsky, DEC
- 23) letter dated January 5, 2005 from Larry Bakos, Windsong Mobile Home Park to David Marcisofsky, DEC
- 24) letter dated February 2, 2005 from Larry Bakos, Windsong Mobile Home Park to David Marcisofsky, DEC
- 25) letter dated April 2, 2005 from Albert A. Shepherd, Windsong Mobile Home Park to David Marcisofski [sic], DEC
- 26) letter dated May 2, 2005 from Albert A. Shepherd, Windsong Mobile Home Park to David Marcisofsky, DEC
- 27) letter dated September 9, 2005 from Albert A. Shepherd, Windsong Mobile Home Park to David Marcisofsky, DEC
- 28) letter dated October 9, 2005 from Albert A. Shepherd, Windsong Mobil Home Park to David Marcisofsky, DEC
- 29) letter dated December 8, 2005 from Albert A. Shepherd, Windsong Mobile Home Park to David Marcisofsky, DEC
- 30) letter dated May 2, 2005 from Albert A. Shepherd, Windsong Mobile Home Park to David Marcisofsky, DEC
- 31) letter dated March 5, 2006 from Albert A. Shepherd, Windsong Mobile Home Park to David Marcisofsky, DEC
- 32) letter dated April 9, 2006 from Albert A. Shepherd, Windsong Mobile Home Park to David Marcisofsky, DEC
- 33) letter dated July 4, 2006 from Albert A. Shepherd, Windsong Mobile Home Park to David Marcisofsky, DEC
- 34) letter dated September 10, 2006 from Albert A. Shepherd, Windsong Mobile Home Park to David Marcisofsky, DEC with the unsigned wastewater facility operation report for August 2006
- 35) letter dated August 10, 2006 from Albert A. Shepherd, Windsong Mobile Home Park to David Marcisofsky, DEC

- with the unsigned wastewater facility operation report for July 2006
- 36) letter dated July 4, 2006 from Albert A. Shepherd, Windsong Mobile Home Park to David Marcisofsky, DEC with the unsigned wastewater facility operation report for June 2006
  - 37) letter dated October 10, 2003 from James C. Witzel, General Manager for Windsong Mobile Home Park, Pittsford Management Services, LLC to David Marcisofsky, DEC
  - 38) letter dated March 16, 2004 from David Marcisofsky, DEC to Robert Houle, Hamilton Funding
  - 39) letter dated June 2, 2004 from David Marcisofsky, DEC to Jim Witzel
  - 40) letter dated October 20, 2004 from David Marcisofsky, DEC to Jim Witzel, Pittsford Capital with two copies of photographs, fax from Robert Houle, GM, Windsong Mountain, LP to David Marcisofsky, DEC dated 2/24/05, letter dated February 1, 2005 from Alan M. Swierczek, P.E. to Windsong Mountain, LP, memo dated February 20, 2005 from Alan Shepherd, A.S. Construction, Windsong Mountain LP to DEC re: inflow and infiltration repair plan
  - 41) letter dated October 5, 2006 from David Marcisofsky, DEC to Robert Houle, General Manager, Windsong Mountain, LP
  - 42) rent notice from Frank Loccisano, President, PMP Inc.
  - 43) letter dated December 1, 2006 from David Marcisofsky to Frank Loccisano, President, Paradise Mountain Mobile Home Park
  - 44) application for permit transfer to Frank Loccisano dated January 11, 2007
  - 45) consent order dated February 16, 1989
  - 46) affidavit of Randall C. Young dated July 3, 2007 with the following attachments:
  - 47) New York State Department of State entity information for Paradise Mountain Mobile Home Park, Inc.
  - 48) copy of certified deed from Oneida County Clerk's office showing conveyance of property to Frank Loccisano on August 9, 1977
  - 49) copy of certified deed from Oneida County Clerk's office showing conveyance of property to Paradise Mountain Mobile Home Park, Inc. on December 16, 1977, and
  - 50) affidavit of service dated July 25, 2007 by Beth Anne Widrick, DEC Region 6 Division of Legal Affairs Secretary.

In response to staff's motion, respondent submitted the following:

- 1) affidavit of Frank Loccisano dated September 27, 2007<sup>2</sup>
- 2) letter dated October 17, 2007 from Stuart Finer, Esq. to Hon. James McClymonds and attached to this letter:
- 3) letter dated October 17, 2007 from Stuart Finer, Esq. to Randall Young, Esq., and
- 4) letter dated October 9, 2007 from Alan M. Swierczek, P.E. to DEC, Attn: Ronald J. Novak, P.E., Regional Enforcement Coordinator with attached draft plan for shutdown and inspection of wastewater treatment plant.

By letter dated October 25, 2007, Regional Attorney Young submitted staff's sur-reply to respondent's submission in opposition to the staff's motion for order without hearing with:

- 1) affidavit of Randall C. Young dated October 24, 2007
- 2) letter dated June 8, 2007 from Acting Regional Attorney Randall Young to Frank Loccisano, President, Paradise Mountain Mobile Home Park, Inc. with:
- 3) proposed consent order.

#### Staff's Position

Staff alleges that respondent Paradise is a New York State corporation that owns and operates the subject wastewater treatment plant that is associated with the mobile home park located at 10601 Hulser Road, in the Town of Trenton, Oneida County, New York. The SPDES permit that was issued to Paradise expired on December 31, 2005 and Paradise took the facility back over on or about September 1, 2006 after leasing it to another entity. Staff contends that since that date, Paradise is liable for discharging into the waters of the state without a valid permit. In addition, Staff maintains that Frank Loccisano, the president of Paradise, as an individual who was responsible for Paradise and in a position to obtain a SPDES permit and rectify any of the operational problems with the wastewater facility, is personally liable for the alleged violations.

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<sup>2</sup> As noted above, this affidavit was initially submitted unsigned and unnotarized. A copy of a signed and notarized version was received by the OHMS with Mr. Finer's letter of October 31, 2007. Mr. Finer noted in his letter that the original version of this affidavit would be forthcoming but to date I have not received it.

Staff proposes a penalty of \$300,000, suspending \$149,000 of this sum provided that the respondents fulfill their obligations to obtain an engineering report to assess the wastewater facility, repair the facility in accordance with the plan in a timely manner including the correction of infiltration/inflow into the sanitary collection system, and commit specified funds to the repair and maintenance of the facility. Staff argues that because the respondents had signed a consent order in 1989 to rectify the operation of this facility and because the Department staff had made repeated unsuccessful efforts to obtain compliance the penalty should be significant. Staff also requests an order, *inter alia*, requiring that the Department staff not issue a permit authorizing discharges from the facility until the respondents have retained a certified wastewater treatment operator for a term of at least two years, completed measures to prevent bypassing of the facility, and ensure that the effluent is meeting water quality standards. Staff also requests that the Commissioner prohibit the respondents from authorizing new connections to the facility until a SPDES permit is issued and that all discharges from the facility are ceased within 120 days of the Commissioner's order unless the Department has issued the respondents a SPDES permit.

In response to the respondents' arguments against finding Mr. Loccisano personally liable, staff states that he was in a position to address the violations but failed to and therefore should be found liable. As for the claim by respondents that they were not aware of the poor operation of the facility while it was leased to others, the Department staff argues that by September 1, 2006 the respondents had retaken control of the mobile home park. In addition, staff provides a letter dated December 1, 2006 to Mr. Loccisano that details the alleged problems with the facility. Staff annexed a letter Mr. Loccisano sent dated January 8, 2007 to DEC that acknowledges wastewater treatment plant deficiencies and a plan for rectifying same. Staff also provides a proposed consent order and cover letter that were sent to the respondent in June 2007 via the U.S. Mail and to which no response was received.

#### Respondents' Position

The respondents contend that because they leased the property to Pittsford Capital V in 1996, to whom the SPDES permit was transferred, they have no responsibility for the problems that ensued with the wastewater treatment plant during that

period.<sup>3</sup> Respondent Loccisano contends that until Robert Houle, a manager for Windsong Mountain LP (this entity took over the facility in February 2004), defaulted on payments under the lease agreement and failed to pay real property taxes, the respondents were completely unaware of the problems at the facility. Respondent Loccisano states that he was not aware of the "deplorable condition of the park both financially and physically." Respondent Loccisano argues that he attempted to take over the SPDES permit in January of 2007 but because he could not get the consent of Robert Houle and Windsong Mountain the Department did not agree to the transfer. He further argues that he was not aware of any violations at the facility and therefore had no opportunity to cure them. He contends that he never received the December 1, 2006 letter from Mr. Marcisofsky.

With respect to the personal liability of Mr. Loccisano, he provides in his affidavit that he has none and that the consent order was executed by the corporation and not by him personally.

The respondents have submitted a proposal for engineering services to address the problems with the sewage treatment facility. Respondents also make a general denial of all the "allegations and violations claimed by DEC . . ." on the basis that there is inadequate evidence to support them. Respondents submitted along with this affidavit a handwritten statement of Mr. Loccisano that appears to respond to some of the contentions in Mr. Marcisofsky's affidavit.

The respondents maintain that if any entity is responsible for the problems at the wastewater treatment facility it is Pittsford Capital and/or Robert Houle and/or Windsong Mountain but not the respondents named in this proceeding. Moreover, respondents allege that because the cost of repairs for the facility will be considerable in addition to the other expenses associated with repairs at the mobile home park, penalties should not be assessed. Mr. Loccisano states that if penalties are assessed there will not be monies available for repairs to the wastewater treatment facility. Mr. Loccisano explains in his affidavit that he is prepared to proceed with repairs to the facility "[a]s soon as the engineering agreement has been executed and the cost to remedy contract has been agreed upon . . ."

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<sup>3</sup> The Department staff maintains the transfer occurred in 2001. This is borne out by the application to transfer signed by Mr. Loccisano on January 16, 2001. Marcisofsky Affidavit (Aff.), Ex. 3.



## FINDINGS OF FACT

1. Paradise Mountain Mobile Home Park is located at 10601 Hulser Road, Town of Trenton, Oneida County, New York. On August 9, 1977, Country Village Park, Inc. transferred the property to Frank Loccisano. Young Aff., Ex. 19. On December 16, 1977, Frank Loccisano transferred the property to Paradise Mountain Mobile Home Park, Inc. Young Aff., Ex. 20. In 1981, Frank Loccisano, as owner, applied to the Department for a SPDES permit to discharge sanitary waste from 160 homes into an unnamed tributary of Nine Mile Creek, a Class D water of the state. The Department issued the permit (Permit NY 002 9327) that became effective on January 1, 1982. Marcisofsky Aff., Ex. 1.

2. In February 1989, Frank Loccisano signed a consent order with the Department on behalf of Paradise based upon the facility's inadequate treatment of its sewage resulting in violations of the SPDES permit. Marcisofsky Aff., Ex. 17. In addition, the consent order provides that respondent Paradise had failed to perform the following: complete construction of a tertiary treatment system, perform daily/monthly monitoring, retain the services of a certified operator or provide backup when the primary blower failed - all in violation of the permit. Id. In addition, the respondent Paradise was found to be operating an illegal solid waste facility. Id.

3. On May 2, 1990, the Department issued a permit modification for the construction of a tertiary treatment system in addition to the secondary treatment. This permit prohibited any bypass of the tertiary treatment system. The permit's expiration date was January 1, 2006. Marcisofsky Aff., Ex. 2.

4. On September 27, 2001, the Department transferred the SPDES permit from Paradise to Pittsford Capital V pursuant to an application for permit transfer submitted by Frank Loccisano. The mobile home park was renamed Windsong Mobile Home Park. Marcisofsky Aff., Ex. 3.

5. On or about June 2, 2003, Pittsford Management Services, LLC took over management of Windsong Mobile Home Park. Marcisofsky Aff., Ex. 4.

6. On or about February 25, 2004, Windsong Mountain LP took over the lease from Pittsford Management Services, LLC to the mobile home park. Robert Houle was the designated general manager for Windsong Mountain LP. Marcisofsky Aff., Ex. 5.

7. On or about September 1, 2006, Paradise regained full control of the facility from Windsong Mountain LP as a result of the latter entity's failure to meet its obligations under the lease agreement and to pay real property taxes. Marcisofsky Aff., Ex. 6B; Loccisano Aff., ¶ 7.

8. As president of Paradise, Frank Loccisano applied for a permit transfer from DEC in January 2007. The Department staff did not authorize this transfer as it was not signed by Windsong Mountain nor Robert Houle. Marcisofsky Aff., ¶ 11; Ex. 16. In addition, the transfer application was received by the Department on January 31, 2007, over a year after the permit had expired. Marcisofsky Aff., Ex. 16.

9. Monthly operating reports for this facility show 45 occasions of sanitary waste bypassing the treatment system and entering the unnamed tributary of Nine Mile Creek without tertiary treatment. Marcisofsky Aff., ¶ 13; Exs. 7A-7Y.

10. Since 2004, the sewage treatment facility at Paradise has been in a deteriorating condition that is in need of repair. Marcisofsky Aff., ¶ 14. In 2003, Pittsford Management Services, LLC identified potential sources of stormwater infiltration into the facility's collection system. Marcisofsky Aff., Ex. 8.

11. By letters dated March 16, 2004, June 2, 2004, October 20, 2004, October 5, 2006, and December 1, 2006, DEC Region 6 Division of Water Environmental Engineering Technician 3 David Marcisofsky wrote to the operators of the Paradise/Windsong facility indicating the need for repairs of the system, reporting violations of the permit such as bypasses of the system and the inflow of a volume of waste beyond the permitted amount, and noting the failure to retain a certified operator to run the facility. Marcisofsky Aff., Exs. 8-11, 13, 15.

12. Mr. Marcisofsky did receive some responses to his reports indicating intentions by the respective operators to repair the system. Marcisofsky Aff., Exs. 4, 6B, 12. There is no indication that any of these promised measures were taken to rectify the failing system.

13. By letter dated June 8, 2007, Mr. Young wrote to Frank Loccisano to inform him of the discharge of pollutants into the waters of the state without a permit and to provide him with an opportunity to resolve the violations prior to the initiation of formal enforcement proceedings. Young Aff., Exs. 21, 22. The

respondent did not reply to this letter prior to staff's initiation of this enforcement proceeding.

14. In its reply to the staff's motion for order without hearing, the respondent Loccisano submitted a proposal dated September 21, 2007 from Alan M. Swierczek, P.E. to assess the wastewater treatment facility and to embark upon a multi-year "rehab program." Loccisano Aff., Ex. A. By letter dated October 17, 2007, Mr. Finer submitted a schedule prepared by Alan M. Swierczek, P.E. for DEC's review concerning the facility's examination and repair.

### **Discussion**

#### Staff's Motion for Order without Hearing

#### Grounds for Summary Order

Section 622.12 provides that "[a] contested motion for order without hearing will be granted if, upon all the papers and proof filed, the cause of action or defense is established sufficiently to warrant granting summary judgment under the CPLR in favor any party." 622.12(d). "The motion must be denied . . . if any party shows the existence of substantive disputes of facts sufficient to require a hearing." 622.12(e). Summary judgment, under the CPLR, is appropriate when no genuine, triable issue of material fact exists between the parties and the movant is entitled to a judgment as a matter of law. CPLR § 3213(b); Friends of Animals v. Association of Fur Mfgs., 46 NY2d 1065, 1067 (1979).

Staff has established that the SPDES permit associated with respondents' facility expired as of January 1, 2006. The respondents have not provided any information in their papers to dispute that the Paradise Mountain Mobile Home Park, Inc.'s wastewater treatment facility has been discharging without a permit since that time. Instead, Mr. Loccisano argues that he has had no dealings with the facility for approximately 10 years between 1996 until 2006. Since the transfer was in 2001, not 1996, he actually leased the facility to others for less than the 10 year period he identified.

Respondent Loccisano maintains that the facility was leased to Pittsford Capital and subsequent entities. He states that once he was no longer receiving his lease payments, he took back control of the enterprise in the fall of 2006. Although staff has presented a lengthy history of noncompliance at Paradise, it is not seeking to find the respondents liable for that entire

period. Rather, it is only asserting that the respondents are responsible for discharging without a permit during the period that they regained control of the mobile home park beginning in September 1, 2006. See, motion for order without hearing, p. 2.

ECL § 17-0803 provides:

Except as provided by subdivision five of section 17-0701 of this article, it shall be unlawful to discharge pollutants to the water of the state from any outlet or point source without a SPDES permit issued pursuant hereto or in a manner other than as prescribed by such permit.

Section 750-1.4 of 6 NYCRR states:

Requirement to obtain a permit.  
a) except as provided in section 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 the discharge of any pollutant in a manner other than as prescribed by such permit.

ECL § 71-1929 provides:

Violations; civil liability  
1. 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, order or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder, shall be liable to 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.

Mr. Loccisano claims that he attempted to "file a new permit and was prohibited from filing same without consent of Robert Houle and Windsong Mountain . . ." He argues that it was not his responsibility that DEC failed to "take the application on behalf of [Paradise]" Loccisano Aff., ¶11. Apparently in response to Mr. Marcisofsky's letter of December 1, 2006 requesting that respondent Loccisano file an application for permit transfer and rectify certain violations at the wastewater treatment facility, Mr. Loccisano sent a transfer application to the Department dated January 11, 2007 that was not received by the Department until January 31, 2007. Marcisofsky Aff., Ex. 6A. The permit expired on January 1, 2006 and therefore, there was no longer a permit to transfer. Marcisofsky Aff., Ex. 1. While respondent Loccisano may not have been able to obtain the former operators' signature on a timely application to transfer the permit, nothing prevented the respondents from either challenging the Department's inaction on the transfer or from applying for a new SPDES permit and working with the Department staff to rectify the many noted violations at the facility.

Mr. Loccisano claims that he never received any notification that the facility was in disrepair or in violation of its SPDES permit. However, the correspondence sent to him by the Department belies this allegation. Marcisofsky Aff., Ex. 15; Young Aff. ¶¶ 2,3; Exs. 21-22. And, as the Paradise maintained ownership of this property throughout this period, the respondents remained obligated to ensure that the sewage treatment system was functioning properly.

As for the respondent Loccisano's handwritten, barely legible submission annexed as Exhibit B to his affidavit that disputes the staff's allegations regarding the poor functioning of the wastewater treatment facility, these statements have no validity. Mr. Loccisano has not established himself as a wastewater treatment expert and the multiple operating reports submitted by those operating the facility in addition to Mr. Marcisofsky's observations prove the system was failing. In any case, the Department staff's motion is based on the lack of a SPDES permit which respondents have not contested.

The statutory standard for the proof required on a motion for summary judgment is provided in CPLR 3212(b). In summary, the motion must include an affidavit of a person having knowledge of the facts, together with the pleadings and other available facts. See, S.J. Capelin Associates, Inc. V. Globe Mfg. Corp, 34 NY2d 3008, 341-343. Staff has met this burden by providing a detailed affidavit from a Division of Water staff member who was responsible for SPDES compliance at this facility. The

respondents have failed to present any material facts indicating a need for a hearing. The only submission is from Mr. Loccisano and he does not dispute that the permit expired at the end of 2005. With respect to allegations as to the condition of the facility; these are only relevant to an assessment of the harm to the environment - the relief. And, respondent Loccisano has not demonstrated any expertise in wastewater treatment that would give these statements any weight. Similarly, the submissions from the respondents' engineer regarding prospective plans to remediate the system bear on relief only.

### Personal Liability

Mr. Loccisano also contests the staff's efforts to find him personally liable for the violations. He asserts that he signed the 1989 consent order on behalf of Paradise and not as an individual and therefore there is no basis to find him personally responsible. Loccisano Aff., ¶¶ 2-3.

As noted by staff in its brief in support of the motion for summary order, a corporate officer may be held criminally liable for violations of statutes enacted to protect the public health, safety and welfare, where that officer had the authority and responsibility to prevent the violation. In the Matter of Sheldon Galfunt and Hudson Chromium Company, Inc. (Commissioner's Order, May 5, 1993) citing United States v. Park, 95 S. Ct. 1903 (1975); United States v. Dotterweich, 64 S. Ct. 134 (1943), and United States v. Hodges X-Ray, Inc., 759 F.2d 557 (6<sup>th</sup> Cir. 1985) (finding that this rationale applied in civil matters as well).

Mr. Loccisano, as president of Paradise, appears to be the sole shareholder of this company, making all decisions with respect to its operation. In September 1981, Mr. Loccisano submitted the application for the SPDES permit identifying himself as the owner of the facility both in the body of the form and on the signature line. Marcisofsky Aff., Ex. 1. While he checked off the box for type of ownership as "corporate," there is no indication on this form of any corporate entity's identity. Id. As a result of the failure of Windsong Mountain/Robert Houle to pay rent to Paradise, Mr. Loccisano stepped in to inform the tenants that their rent should be paid to Paradise as of September 1, 2006. A quick search of the on-line version of the *White Pages* reveals that the address Mr. Loccisano asked the tenants to send their rent is the same as his home in Brooklyn,

New York.<sup>4</sup> By letter dated January 8, 2007, Mr. Loccisano, identifying himself as president and owner, wrote to DEC reporting his action to remove Mr. Houle as manager of the mobile home park due to "severe deterioration of the whole infrastructure." Marcisofsky Aff., Ex. 6B. This letter goes on to report the measures he was taking to rectify the problems with the operation of the wastewater treatment plant. Id.

Based upon these factors, I am convinced that during the period the Department staff has identified for purposes of establishing violations, Mr. Loccisano was directly in charge of this facility and was in the position to take whatever steps necessary to change managers (which he did), submit a timely transfer of the SPDES permit, submit a new SPDES permit application, and employ the appropriate expertise to investigate and rehabilitate the failing sewage treatment system (see, e.g., Swierczek letter dated 10/9/07). Because Mr. Loccisano had the power, authority and responsibility to prevent the violations at Paradise and failed to do so, individual liability attaches. See, Matter of Wayne Jahada, individually and Watertown Iron and Metal, Inc., (ALJ Ruling, p. 19, June 14, 2006).

### Penalties

\_\_\_\_\_The Department staff has requested the following relief, *inter alia*, from the Commissioner to address the violations:

- 1) Ordering the respondents to pay, jointly and severally, a civil penalty of \$300,000 with \$149,000 suspended provided that the respondents comply with the provisions of the Commissioner's order;
- 2) Within 30 days cease discharging from the facility or submit a complete approvable application for a SPDES permit;
- 3) Ordering an approvable engineering report that details the physical condition of the facility, the repairs/upgrades necessary to ensure that all sewage is collected and treated along with a schedule for same and an approvable plan to reduce infiltration/inflow into the sanitary collection system.

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<sup>4</sup>[http://www.whitepages.com/search/FindPerson?extra\\_listing=mixed&form\\_mode=opt\\_b&post\\_back=1&firstname\\_begins\\_with=1&firstname=Frank+&name=Loccisano&street=&city\\_zip=Brooklyn&state\\_id=NY&localtime=survey](http://www.whitepages.com/search/FindPerson?extra_listing=mixed&form_mode=opt_b&post_back=1&firstname_begins_with=1&firstname=Frank+&name=Loccisano&street=&city_zip=Brooklyn&state_id=NY&localtime=survey)

- 4) Ordering respondents to identify a schedule for commitment of funds to make these necessary repairs, the time frame for same, and a bond to cover the cost of the project;
- 5) Ordering the development of a plan and implementation schedule for routine maintenance of the facility;
- 6) Ordering the staff to refrain from issuing a permit prior to: 1) respondents' retention of a certified wastewater treatment plant operator for a term of at least two years; and 2) respondents' completion of measures to ensure that there is no bypassing of the facility;
- 7) Prohibiting respondent from authorizing any new connections to the collection system until a permit is issued; and
- 8) Ordering that respondents must cease all discharges from the facility within one hundred twenty days of the day of the order unless it has obtained a SPDES permit from the Department.

The Department's 1990 Civil Penalty Policy requires that several factors be assessed in determining a penalty. This policy requires that the gravity of the violation and the economic benefits of non-compliance be assessed. To assess the gravity of the offense, the policy sets forth these factors: a) potential harm and actual damage caused by the violations; and b) relative importance of the type of violations in the context of the Department's overall regulatory scheme.

Respondents' failure to obtain a SPDES permit is a serious environmental violation because the critical part of the application process would be identification of problems related to the functioning of the respondents' wastewater treatment facility and a schedule to address same. By delaying the submission of a SPDES permit application and the correction of the myriad of problems at the wastewater treatment facility, the respondents allowed the continued discharge of polluted water into the State's waters.

In his affidavit, Mr. Loccisano states that since the undertaking of the operation of the park there has been expenditures of: a) \$150,000 in past due taxes; b) \$25,648.86 in past due water charges; c) \$209,000 to repairs to the road;



d) \$10,000 in equipment repairs . . . "after the devastation caused by Robert Houle." Loccisano Aff., ¶ 9. But as staff notes in its responsive papers, Mr. Loccisano does not present what sums the respondents have received in income. While Mr. Loccisano suggests that the State should proceed against the prior leaseholders and managers for their failings, it is really the respondents' responsibility to take whatever action they deem appropriate to pursue their remedies against these entities with which they chose to do business. Throughout the period that Paradise leased this property, Paradise remained the owner with Mr. Loccisano the responsible corporate officer. At any time, the respondents were in a position to ensure that the facility was being maintained and that the wastewater system was functioning appropriately. They chose not to become involved until the rent was not paid to them thereby increasing the repairs that they now must shoulder.

By delaying the submission of the SPDES application and the related repairs to the facility, the respondents have saved themselves money although the staff has not presented any information as to what those sums would be. Mr. Loccisano states that if the respondents must pay penalties they will not be able to afford the repairs. But there must be a penalty or those business owners who have chosen to be in compliance with environmental laws will certainly have no monetary incentive to do so. Moreover, respondents will have an unfair economic advantage over those compliant businesses.

The Civil Penalty Policy also sets forth factors to be used to adjust the gravity component: a) culpability, b) violator cooperation, c) history of non-compliance, d) ability to pay, and e) unique factors. With respect to culpability, as demonstrated by the facts set forth above, the respondents were aware of the terms of the SPDES permit because they sought the transfer of the permit in 2007. They received at least two letters from the Department requesting their attention to the problems at the facility. They chose to ignore these until staff's motion for order without hearing was served upon them. Therefore, with respect to cooperation, until more coercive steps were taken by the Department, the respondents were not cooperating to rectify the problems at the facility. As noted by the 1989 consent order, there has been a history of non-compliance in addition to the more recent failures to timely apply for a new permit and to address the failing wastewater treatment system. With respect to ability to pay, other than generalized statements that the expenses of repair prevent any penalty, there was no specific revelation of the financial capacity of these respondents. No

unique factors that would bear on the penalty have been brought to my attention.

The Civil Penalty Policy requires that all monetary penalty calculations begin with the potential statutory maximum dollar amount which could be assessed. As set forth above, ECL § 71-1929 provides for a \$37,500 penalty per day for discharging without a permit. As the staff notes in its brief in support of the motion for summary order, there are 303 days from September 1, 2006 to June 30, 2007 yielding a maximum potential penalty of \$11,362,500. Staff Br., p. 7. Clearly, the staff's request for a \$300,000 penalty with a little less than half suspended is appreciably less than the maximum amount that could be assessed pursuant to the Environmental Conservation Law. Staff cites to the Division of Water's penalty assessment guidance which recommends a penalty of \$500 per day for an unpermitted discharge of non-toxic pollutants as the basis for finding \$151,500. <http://www.dec.ny.gov/regulations/2652.html>, Attachment 3. Apparently, staff determined that doubling this penalty was justified in light of the seriousness of the respondents' violations.

I find that the staff's penalty request is reasonable. However, as no party has submitted any estimates of what the wastewater treatment system upgrade will cost, I am reluctant to recommend that the respondent be ordered to pay the full payable penalty immediately. Rather, I recommend that a payment schedule be developed so that the respondents can apply their resources to both addressing the facility's upgrade and paying a penalty simultaneously. In the event that the respondents fail to meet the requirements that staff has put forward in its motion papers, and which I agree the Commissioner should adopt in his order, the respondents should be required to pay the full balance of the \$300,000 immediately.

### **Conclusions of Law**

From the foregoing Findings of Fact and the discussion above, the following conclusions of law are established for the purposes of this motion:

1. There are no material issues of fact and staff's motion for order summary order should be granted in its entirety.
2. Since at least September 1, 2006, the respondents have violated ECL § 17-0803 and 6 NYCRR § 750-1.4 by discharging sanitary waste without a SPDES permit from the Paradise Mountain Mobile Home Park, Inc. into an unnamed tributary of

Nine Mile Creek located at 10601 Hulser Road, Town of Trenton, Oneida County, New York.

3. Respondents Frank Loccisano and Paradise Mountain Mobile Home Park, Inc. are jointly and severally liable for these violations.
4. Respondent Frank Loccisano, as an officer of Paradise Mountain Mobile Home Park, Inc., was in a position to prevent the proven violations of the ECL and having failed to do so is personally liable for these violations.

#### **Civil Penalties and Other Relief Requested**

As relief, Department staff seeks an Order of the Commissioner<sup>5</sup>:

1. Finding that the respondents have violated ECL § 17-0803 and 6 NYCRR § 750-1.4 by utilizing a point source for the discharge of pollutants to the waters of the State without a permit since September 1, 2006;
2. Finding that the facility is in poor repair and unlikely to consistently attain compliance with effluent limits;
3. Ordering respondents jointly and severally to pay a civil penalty of \$300,000, suspending \$149,000 provided the respondents comply with the provisions of the requested order;
4. Ordering that within 30 days of the date of the Commissioner's order, respondents must either cease discharging from the facility or submit a complete approvable application for a SPDES permit;
5. Ordering that in addition to materials that may otherwise be required as part of an application for a SPDES permit for this facility, respondents' SPDES permit application must include:

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<sup>5</sup>I did not recite certain clauses proposed by staff that merely reflect the inherent authority of the Department with respect to all permits such as the authority to deny the permit, to add additional conditions to those listed here, or to take further actions concerning matters not specifically alleged in this proceeding.

- a. an approvable engineering report regarding the physical condition of the collection system and treatment facility; and repairs and/or upgrades that may be prudent or necessary to ensure all waste collected by the sewers on the premises receives full treatment in accordance with the facility's design. This must include an evaluation of the facility's ability to treat wastewater without bypassing;
  - b. an approvable implementation schedule for the repairs and upgrades identified as being prudent or necessary;
  - c. an approvable engineering plan and implementation schedule to identify and reduce infiltration/inflow into the sanitary collection system and repair or replace corroded or failing components of the sewage treatment collection and disposal system. In order to obtain Department approval, this plan must include a schedule indicating the commitment of money to be expended each year for the project, the type of work to be done (including the approximate footage of sewer line to be evaluated/repared and quantity of infiltration/inflow to be eliminated), the time frame for completing the project, the project's estimated cost and a surety bond to cover the cost of the project;
  - d. a plan and implementation schedule for routine maintenance of the facility including replacement dates for facility components and equipment and a proposed budget for implementation of the plan. This plan will be incorporated into any permit the Department may issue for the facility;
6. Ordering that the Department staff **not** issue a permit authorizing discharges from this facility until respondents retain a certified wastewater treatment plant operator pursuant to a contract for a term of at least two years; and completed measures to prevent bypassing and to ensure wastewater discharged from the facility will meet the standards and conditions of any permit staff may prepare for the facility;
  7. Directing staff to include the measures identified in paragraphs 5(c) and 5(d) above as special conditions in any permit that may be issued to respondents for operation of the facility;

8. Stating that nothing requires Department staff to issue a permit to respondents if they fail to demonstrate that the facility will meet all applicable statutory and regulatory standards;
9. Ordering respondents to comply with the interim conditions and limitations set forth in Schedule A attached to its "motion for order without hearing";
10. Prohibiting respondents from authorizing any new connections to the collection system for the facility until a permit is issued for the facility;
11. Directing the respondents to submit all submissions to:  
  
Ronald J. Novak, P.E.  
Regional Enforcement Coordinator  
NYS Department of Environmental Conservation  
317 Washington Street  
Watertown, NY 13601
12. Ordering that the Department will have access to the facility to determine respondents' compliance with the ECL, the permit, and the Commissioner's order;
13. Ordering that respondents must cease all discharges from the facility within 120 days of the order unless they have obtained a SPDES permit from the Department.

#### **Ruling and Recommendation**

Pursuant to 6 NYCRR § 622.12(d), the proof submitted by the Department staff in its motion for order without hearing establishes the violations sufficiently to warrant the granting of summary judgment under the CPLR. The respondents have failed to raise any substantive dispute of fact sufficient to warrant a hearing. The relief requested by Department staff is authorized under the ECL and is consistent with prior orders of the Commissioner.

Accordingly, on the issue of respondents' liability for the violations alleged, Department's motion is granted in all respects. I recommend that the Commissioner issue an order directing the relief requested with the exception of the following. The payable portion of the penalty should be ordered to be paid on a schedule so that the respondents can simultaneously address the facility's upgrade and pay penalties. Staff should be authorized to establish this schedule. In

addition, I do not find it necessary for the Commissioner to find that the facility is in poor repair. The staff is not basing its charges on these claims and the respondents will be required to do a full review of the state of the facility as part of their permit application. Therefore, such a finding is superfluous.

Dated: Albany, New York  
November 14, 2007