

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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TRANSMITTAL BY EMAIL ONLY

September 13, 2017

Joseph E. Coffey, Jr., P.E.
Commissioner
City of Albany
Department of Water & Water Supply
10 North Enterprise Drive
Albany, New York 12204
jcoffey@albanyny.gov

Re: Order on Consent
R4-2017-0720-225

Dear Mr. Coffey:

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

Sincerely,



Richard Ostrov
Regional Attorney
Region 4

Enclosure

ec: S. Crisafulli
D. Thorsland

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of Violations of Article 17 of the Environmental
Conservation Law and Part 750 of Title 6 of NYCRR

Order on Consent
R4-2017-0720-225

- By -

Albany Water Board
10 N. Enterprise Drive
Albany, NY 12204

Respondent
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WHEREAS, Albany Water Board (SPDES Permit # NY-0025747) is subject to ECL Section 17-0826-a also known as the Sewage Pollution Right to Know Act ("SPRTK"), and implementing regulations at 6 NYCRR 750-2.7(b)(2)(i). The Act and regulations require owners and operators of publicly owned treatment works ("POTWs") and publicly owned sewer systems ("POSSs") to report untreated and partially treated sewage discharges to DEC and health authorities immediately, but in no case later than two hours from discovery of the discharge.

WHEREAS, the violations consist of Respondent's failure to report within two hours combined sewer outfall discharges to the Hudson River between June 23, 2017 and July 2, 2017 in violation of ECL Section 17-0826-a and 6 NYCRR 750-2.7(b)(2)(i).

WHEREAS, Respondent has: (i) admitted to failing to report the discharges in a timely manner; (ii) taken actions to ensure timely reporting in the future; (iii) provided notifications to the DEC after the fact; (iv) signed this Order; and (v) agreed to a \$5000 EBP to be determined in accordance with the terms of the Order; and (vi) sent this signed and notarized Order to the New York State Department of Environmental Conservation, Office of General Counsel-Region 4, 1130 North Westcott Road, Schenectady, New York, 12306-2014, Attn: Rich Ostrov, Regional Attorney;

WHEREAS Respondent, having waived the right to a hearing on said violations, and after due consideration having been had thereon, it appearing that this Order will be advantageous to the State, and Respondent admits the violation set forth herein;

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to the applicable provisions of the ECL and/or Rules and Regulations, that:

I. 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.

II. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and its successors (including successors in title) and assigns.

III. Respondent agrees to expend not less than FIVE THOUSAND DOLLARS (\$5,000) on an Environmental Benefit Project ("EBP") consistent with the EBP Policy in CP-37. The Department retains the sole authority to approve the EBP. As of the effective date of the Order, Respondent shall set aside the amount of FIVE THOUSAND DOLLARS (\$5,000) to fund the EBP

A. Within 60 days of the effective date of this Order, Respondent shall:

- 1) Notify the principal elected official and the interested stakeholders, regarding the Order's requirement for Respondent to fund EBP(s) and solicit EBP project proposals;
- 2) Meet with the local community and elected officials and other stakeholders to discuss potential EBPs; and
- 3) Submit to the Department for approval an EBP proposal with justification.

B. The Department will review the proposed EBP project and notify the Respondent whether it meets the requirements of CP-37. Within 10 days of the Department's notification of approval of the proposed EBP, Respondent shall deliver a check to the EBP sponsor and provide a notice to the Department of the transfer of money. The EBP sponsor will be required to verify in writing that the EBP funds were spent and used in accordance with the approved Department EBP.

C. Any statements, whether oral or written, that Respondent (or a third party at the request of the Respondent) makes with respect to the EBP will include language stating that the project was undertaken as part of the resolution of an enforcement matter brought by the Department for applicable violation(s). Respondent shall not use the cost of the EBP to reduce its tax liability.

D. If the EBP is not been approved by the Department within one year of the effective date of this Order, the amount of the EBP shall be paid as a penalty for the violations set forth herein upon demand by the Department.

IV. This Order settles all claims for civil and administrative penalties concerning only those violations described in this Order against Respondent.

IV. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his/her designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers or authorities with respect to any party, including Respondent.

VI. The effective date of this Order is the date that the Commissioner or his designee signs it.

DATED: September 13, 2017

BASIL SEGGOS, COMMISSIONER
New York State Department of Environmental
Conservation

By: 

Keith Goertz
Regional Director Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

Albany Water Board, Respondent

1 By (Signature): William M. Clay
 Title: Chairman
 Date: 8/4/17

STATE OF NEW YORK)
) ss.:
 COUNTY OF)

On the 4th day of August in the year 2017, before me, the undersigned, personally appeared (*Full name*) William M. Clay, personally known to me who, being duly sworn, did depose and say that he/she/they reside at (*Full mailing address*) 4 Highland Court and that he/she/they is (are) is the Chairman of the Albany Water Board, the Respondent described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the Albany Water Board.

Lisa Marie Merwin
 Notary Public, State of New York

LISA MARIE MERWIN
 NOTARY PUBLIC-STATE OF NEW YORK
 No. 01ME6228962
 Qualified in Schenectady County
 My Commission Expires September 27, 2018