

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Article 17 of the
Environmental Conservation Law

ORDER ON CONSENT

File No. R4-2008-0912-137

- by -

Albany Water Board
35 Erie Blvd.
Albany, New York 12204

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (DEC) 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). DEC is responsible for the protection of the water resources of the State pursuant to ECL Article 17.
2. Respondent, the Albany Water Board, is subject to a State Pollutant Discharge Elimination System (SPDES) permit (NY 002 5747) (“permit”) for their combined sewer overflows (CSOs) which includes specific combined sewer outfall locations from which discharges during wet-weather are permitted.
3. Respondent has experienced surcharged conditions in their combined sewer system (CSS) during wet-weather events which have caused sewage back-ups into houses and discharges onto the ground surface from manholes.
4. The permit doesn’t authorize the discharge of CSOs to houses or from manholes.
5. Section 17-0511 of the Environmental Conservation Law provides that: “The use of existing or new outlets or point sources, which discharge sewage, industrial wastes 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.”
6. Respondent’s discharge of CSOs to houses and from a manhole are violations of Section 17-0511 of the Environmental Conservation Law.

7. ECL Section 71-1929 provides for a civil penalty of up to \$37,500 per day for a violation of any provisions of 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 a permit issued thereunder. Injunctive relief is also available.

8. Respondent hereby affirmatively waives its right to a hearing in the manner provided by law, consents to the issuance and entry of this Order on Consent and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. Civil Penalty

Respondent is hereby assessed a civil penalty in the amount of TWO THOUSAND DOLLARS (\$2,000) with respect to the violations identified in this Order. Respondent shall submit a check made payable to the New York State Department of Environmental Conservation with the return of the signed and notarized Order on Consent to the Department. Payment of the civil penalty shall not in any way alter Respondent's obligation to complete performance under the terms of this Order on Consent.

II. Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance. The Schedule of Compliance is incorporated and made part of the provisions, terms and conditions of this Order.

III. Summary Abatement

Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

IV. Binding Effect

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

V. Access

For the purpose of monitoring or determining compliance with this Order on Consent, the ECL, and the Navigation Law employees and agents of the Department and state shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, and to copy such records, or to perform any other lawful duty or responsibility.

VI. Communications

All communications except where otherwise specifically directed should be sent to:

Department: DEC Region IV, Attn: Regional Water Engineer, 1130 North Westcott Road, Schenectady, New York 12306.

VII. Modification of Order

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

VIII. 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.

IX. Submittals

(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.

X. Reservation of Rights

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, suit, 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.

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, its officers, directors, agents, servants, employees, successors and assigns;

C. 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. Civil and Administrative Settlement

Upon completion of the Schedule of Compliance requirements and the payment of the penalty set forth in Paragraph I, this Order settles all claims for civil and administrative penalties concerning the facts giving rise to the violations described herein against Respondent.

XII. Effective Date of Order

The effective date of this Order shall be the date it is executed by the Regional Director.

SCHEDULE OF COMPLIANCE

1) The Albany Water Board (AWB) shall allocate funds to the existing backwater valve grant program, as needed, such that all properties having recurrent instances of sewage back-ups caused by surcharged conditions in the combined sewer system (CSS) are given an opportunity to receive a grant for the installation of a backwater valve. The amount of the grant must, at a minimum, cover at least \$1500 of the cost of the backwater valve and installation. The AWB shall consider all applications submitted by the deadline in the City's November 13, 2008 Press Release on the backwater valve grant program and all backwater valves shall be installed by June 15, 2011.

2) Within 60 days of the effective date of this Order, the AWB shall develop and submit to the Department for review and acceptance the follow:

i) A list of the properties (owner name and address) that have applied for a grant under the backwater valve grant program; which properties have received a grant and the amount received; the location (inside vs. outside) and date of valve installation if completed; and the total cost. The list must be regularly updated to include any additional properties that demonstrate they also have had recurrent instances of sewage back-ups caused by surcharged conditions in the CSS. An updated list must be submitted monthly to the Department for the duration of the backwater valve grant program.

ii) A pamphlet regarding the backwater valve grant program to be mailed directly to all properties known to be affected by sewage back-ups caused by surcharged conditions in the CSS (all properties on the above list). The pamphlet shall contain, at a minimum, a health advisory regarding exposure to sewage from back-ups (coordinated with the Albany County Department of Health); general information on the backwater valve grant program; information on successful valve installations; the average cost to install a valve inside and outside of a building; an estimate of a typical grant payment; contact information for those property owners needing further information; and information regarding upcoming public outreach meetings.

iii) A schedule for a minimum of three public outreach meetings concerning the backwater valve grant program. The meetings shall be open to all City property owners. Paid advertisements providing the dates and times of all the public outreach meetings shall be placed in local newspapers and posted on the City of Albany website.

iv) A schedule for training sessions with potential valve installers (plumbers, contractors, etc.) to review the important elements of installation. The training sessions shall provide reasonable methods to reduce the cost and indicate the proper method of preparing an estimate under the backwater valve grant program. All participants that attend and complete a training session can be identified on a list provided to the public who receive grant applications.

3) Within 90 days of the effective date of this Order, the AWB shall submit to the Department a plan identifying the location and cause(s) of discharges onto the ground surface resulting from surcharged conditions in the CSS that occurred as a result of the August 2008 storm events and compare the intensity of the August 2008 storm events to the design capacity of the CSS in the areas identified as having discharges from surcharged conditions. The plan shall include a description of proposed projects that will help alleviate surcharged conditions within the CSS. Proposed project can include, but should not be limited to, recharge basins, utilization of existing storage structures, and/or additional storage structures. An implementation schedule for each proposed project must be included, which will become an enforceable part of this Order following Department review and acceptance.

4) Within 180 days of the effective date of this Order, the AWB shall submit to the Department a plan for identifying illicit sources of infiltration and inflow (I/I). The plan shall outline the areas to be investigated; the investigation actions (CCTV, smoke testing, dye testing, etc.); and an implementation schedule for each area to be investigated, which will become an enforceable part of this Order following Department review and acceptance. Within 90 days of the completion of the investigations in each area in the above plan, the AWB shall submit a plan and implementation schedule for the actions to be taken to remove or reduce the identified illicit sources of I/I. This schedule will also become an enforceable part of this Order following Department review and acceptance.

5) The Albany Water Department shall report orally to the Department within 24-hours of becoming aware of any discharge from the CSS at locations other than from permitted outfalls, including sewage back-ups caused by surcharged conditions in the CSS. A written report must also be submitted within 5-days of becoming aware of the discharge.