

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7015 0640 0000 2327 0445

December 22, 2015

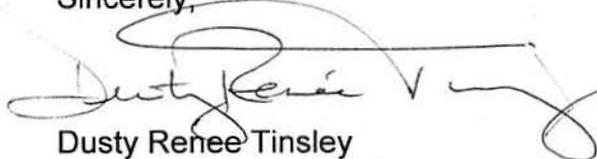
Honorable Christian Pfister
Village of Athens
Water Filtration Plant
2 First Street
Athens, NY 12015

Re: Order of Consent
R4-2015-0624-74M

Dear Mayor Pfister:

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

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: C. Buetow
R. Leone



Department of
Environmental
Conservation

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

----- x
In the Matter of the Violation of
Article 17 of the Environmental Conservation
Law and Title 6 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York (6 NYCRR)

**MODIFICATION OF ORDER ON
CONSENT (“Modification”)**

DEC Case
R4-2015-0624-74M

By

Village of Athens,

Respondent.

----- x
WHEREAS:

1. The New York State Department of Environmental Conservation (DEC or Department) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to § 3-0301 of the Environmental Conservation Law (ECL). In particular, DEC is and has been responsible for the protection of water resources of the State, pursuant to ECL Article 17 and the rules and regulations promulgated there under at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 750, et seq.

Respondent

2. Respondent Village of Athens owns and operates a Water Filtration Plant located at 1355 Schoharie Turnpike, Athens, NY 12015 (hereinafter “facility”) that operates pursuant to a State Pollution Discharge Elimination System (hereinafter “SPDES”) permit NY-0102041 (hereinafter “SPDES permit”).

Order on Consent

3. Respondent is subject to Order on Consent, R4-2015-0708-82, with an effective date of August 12, 2015.

4. The Order on Consent required Respondent to submit, by September 15, 2015, to the Department, for review and approval, a plan and schedule for the removal of sludge from the lagoon/drying bed system that will provide adequate capacity such that the system can be operated as designed.

5. The Order on Consent further required that Respondent, by December 1, 2015, completely implement the plan for removal of sludge from the lagoon/drying bed system that will provide adequate capacity.

6. Respondent in good faith attempted to obtain bids for work required by the Order on Consent by bidding out the work. Respondent received only one cost prohibitive bid. Respondent refined its bid and rebid the work. Respondent has accepted a bid and the contract execution process is underway. Respondent requested an extension, until January 31, 2016, to the deadline of December 1, 2015 contained in the Order on Consent to completely implement the plan for the removal of sludge from the lagoon/drying bed system.

Violations

7. Respondent utilizes a lagoon/drying bed system to treat wastewater. Filter backwash water that contains aluminum ("alum") sludge is sent to a backwash lagoon, where the alum sludge settles and clear water is pumped to a sludge drying bed. Discharges are permitted from the backwash lagoon and sludge drying bed. The alum sludge that accumulates in the lagoon and sludge drying bed must be regularly removed to maintain an effective treatment capacity.

8. Due to lack of adequate maintenance on the lagoon, the amount of alum sludge in both the backwash lagoon and sludge drying bed has accumulated to such an amount that insufficient capacity remains. As a result, the facility is being operated in a manner that is not consistent with the original design intent. The filter backwash water is sent to the backwash lagoon where insufficient settling occurs. The filter backwash water, with a high amount of alum sludge, is then pumped to the sludge drying bed. The only discharge is currently from the sludge drying bed.

9. The facility was inspected on May 28, 2015. At the time of the inspection, material was being added to the walls of the sludge drying bed to try to increase capacity for the alum sludge and clear water.

10. On June 1, 2015, the operator of the facility called to report a breach of the wall of the sludge drying bed that was constructed with the new material. About 5 inches of alum sludge and clear water were discharged through the breached wall which is an unpermitted discharge location. The water appeared to have reached Hollister Lake (Class A) which is the drinking water supply for the Village of Athens.

11. Due to a lack of operation and maintenance to remove the accumulated sludge from the backwash lagoon, the operators were concerned that there was insufficient capacity in the backwash lagoon to provide sufficient settling to meet permit limits. In an attempt to provide sufficient capacity and maintain permit compliance, alum sludge was excavated from the backwash lagoon and piled on the ground surface around the backwash lagoon. This is not proper disposal of the alum sludge after excavation.

12. Alum sludge was also excavated from the sludge drying bed to make additional capacity for sludge. The alum sludge was piled at locations around the facility property. This is not proper disposal of the alum sludge after excavation. There was evidence that alum sludge was transported by runoff toward Hollister Lake.

13. ECL Section 17-0511 states, "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."

14. Respondent's unpermitted discharge from the breach in the sludge drying lagoon wall is a violation of ECL Section 17-0511.

15. 6 NYCRR Part 750-2.8.(a)(2) states "The permittee shall, at all times, properly operate and maintain all disposal facilities, which are installed or used by the permittee to achieve compliance with the conditions of the permit."

16. Respondent's failure to properly operate and maintain the sludge handling system is a violation of 6 NYCRR Part 750-2.8.(a)(2).

17. Respondent's improper disposal of excavated alum sludge from the sludge drying bed to make additional capacity for sludge is a violation of 6 NYCRR Part 750-2.8.(a)(2).

18. The Order on Consent effective August 12, 2015 will terminate upon the effective date of this Modification.

Civil Penalty

19. ECL Section 1929 provides for the following civil penalties: "A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under, shall be liable 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."

Waiver of Hearing

20. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Modification and has agreed to be bound by the provisions, terms and conditions of this Modification.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. In respect to the Modification's violations, a civil penalty for THREE THOUSAND SEVEN HUNDRED NINETY FOUR DOLLARS (\$3,794) is assessed against the Respondent. SEVEN HUNDRED AND SIXTY DOLLARS (\$760) shall be paid to the Department by bank check made payable to the Department of Environmental Conservation at the time this Modification is signed, notarized, and returned to the Department. THREE THOUSAND AND THIRTY FOUR DOLLARS (\$3,034) of the civil penalty shall be suspended conditioned on Respondent's timely compliance with all the terms, conditions and provisions of this Modification including but not limited to the requirements of the Schedule of Compliance. Respondent shall be notified in writing of the violations and payment of the suspended penalty shall be due within 30 days of the receipt of the notice of violations.

II. Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance that is incorporated and made part of this Modification. The Modification supersedes the Order on Consent including its Schedule of Compliance.

III. Summary Abatement

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

IV. Binding Effect

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

V. Communications

For Department:

Regional Water Engineer
New York State Department of Environmental Conservation - Region 4
1130 N. Westcott Road
Schenectady, New York 12306

For Respondent:

Honorable Christian Pfister
Village of Athens
Water Filtration Plant
2 First Street
Athens, NY 12015

VI. Modifications

No change or modification to this Modification 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.

VII. Access

For insuring compliance with this Modification, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

VIII. Effective Date of Modification

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

IX. 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, their directors, officers, employees, servants, agents, successors or assigns.

X. Scope of Modification

Except as specifically provided in this Modification, nothing contained in this Modification shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated there under or permits issued there under based upon other than existing contamination.

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; and

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

XI. Review of Submitted Documents

(A) Whenever the Department's approval of a submittal under the terms of this Modification 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 Modification 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 Modification.

(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 Modification. 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. Settlement Terms

Compliance with the terms and conditions of this Modification, including the Schedule of Compliance, shall be in full settlement of the violations cited in this Modification.

DATED: 12/21, 2015
Rotterdam, New York

Basil Seggos
Acting Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

Schedule of Compliance

Respondent Shall:	Due Date:
<p>Submit to the Department, for review and approval, a plan and schedule for the removal of sludge from the lagoon/drying bed system that will provide adequate capacity such that the system can be operated as designed.</p> <p>The plan must, at a minimum:</p> <ul style="list-style-type: none"> - consider increasing the sludge removal and processing capabilities through additional equipment and/or personnel, including the use of a contractor; - indicate the measures that will be taken during the sludge removal activities to ensure compliance with the SPDES permit effluent limitations; - result in removal of a sufficient amount of solids from the system to ensure that the system can be operated as designed; - include an operation and maintenance plan to ensure that the system can be operated and maintained until the long term plan can be implemented. 	<p>By September 15, 2015</p>
<p>Completely implement the plan for the removal of sludge from the lagoon/drying bed system that will provide adequate capacity.</p>	<p>January 31, 2016</p>
<p>Submit to the Department for review and approval, an engineering plan and schedule for upgrades to the lagoon/drying bed system to provide sufficient capacity to allow for sustained long-term SPDES permit compliance.</p>	<p>March 1, 2016</p>
<p>Completely implement the improvements set forth in the approved plan for the lagoon/drying bed system upgrades.</p>	<p>December 31, 2016</p>