

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

**ORDER ON CONSENT**  
File No. R4-2009-0121-5

- by -

Village of Chatham  
Village Hall  
77 Main Street  
Chatham, NY 12037

Respondent

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**WHEREAS:**

1. The Department of Environmental Conservation ("Department") is the State agency which has jurisdiction over the environmental law and policy of the State pursuant to, *inter alia*, §3-0301 of the Environmental Conservation Law. In particular, DEC is and has been responsible for the protection of the water resources of the State, pursuant to ECL Article 17 and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 750, *et seq.*
2. Respondent, Village of Chatham, is a municipality of the State of New York which operates a waste water treatment plant ("WWTP") located at Brookside Ave Extension, Chatham, New York ("site"). The WWTP is regulated by State Pollutant Discharge Elimination System permit No. NY-0023582 ("permit"). The permit authorizes the discharge of treated wastewater to the Stony Kill Creek (class "C"(TS)) through outfall 001. The permit requires, among other things, the monitoring of the WWTP discharge and the submittal of discharge monitoring reports ("DMR") which summarize monitoring data on a monthly basis. Paragraph 4 below contains a list of permit effluent violations reported by the Respondent on its DMRs.
3. ECL §17-0511 states that the use of existing or new outlets or point sources which discharge sewage or other wastes into waters of this State is prohibited unless such use is in compliance with all Department standards, limitations or regulations.

4. Respondent has violated ECL §17-0511, and its permit by the following:

Violation Summary:

Parameter	Permit Limit	DMR	Reported Value
Flow	0.365 MGD (30 day average)	March 2007 April 2007 January 2008 February 2008 March 2008 April 2008	0.518 MGD 0.565 MGD 0.376 MGD 0.587 MGD 0.664 MGD 0.386 MGD
Oxygen, Dissolved	5 mg/L (Daily Minimum)	June 2008	3.7 mg/L
Total Suspended Solids (TSS)	30 mg/L (30 day Average)	November 2008	38 mg/L
TSS, Percent Removal	85% - Minimum (Monthly Average)	March 2008 November 2008	83% 74%
Ultimate Oxygen Demand	60 mg/L (30 day average)	June 2007	134.7 mg/L
Ultimate Oxygen Demand	183 lb./day (30 day average)	June 2007	310 lb./day
Water Quality Violation (6 NYCRR Part 703.3)	No increase in turbidity that will cause a substantial visible contrast to natural conditions	November 18, 2008 November 19, 2008	Visible contrast in turbidity as observed from the effluent into the Stony Kill, a Class C (TS)

5. ECL §71-1929 provides that any person who violates any provision of Titles 1 through 11 inclusive and title 19 of Article 17 of the ECL or any rule or regulation, order or determination of the Commissioner promulgated thereunder shall be liable for a civil penalty up to thirty seven thousand five hundred dollars (\$37,500). Injunctive relief is also available.

6. Respondent has affirmatively waived their right to a hearing as provided by law and has consented to the issuing of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order.

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

## PENALTY

I. With respect to the aforesaid alleged violation, a civil penalty in the amount of FORTY THOUSAND DOLLARS (\$40,000) is hereby assessed against the Respondent of which EIGHT THOUSAND DOLLARS (\$8,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance (\$32,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

## SCHEDULE OF COMPLIANCE

II. Respondent shall commence implementation of the activities described in the attached Schedule of Compliance, which is an enforceable part of this Order, in accordance with its terms. Respondent shall meet the schedule therein.

## REPORTS

III. All reports required herein shall be made to the Region 4 office of DEC, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Water Engineer.

## ACCESS

IV. Respondent shall allow duly authorized agents and employees of DEC access to any facility, site, or records owned, operated, controlled, or maintained by Respondent, without prior notice, at such times as may be desirable or necessary, and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

## INDEMNIFICATION

V. 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, his or her employees, servants, agents, successors or assigns.

## SUCCESSORS AND ASSIGNS

VI. The provisions of this Order shall be deemed to bind Respondent, his agents employees, successors, and assigns, and all persons, firms, and corporations acting under or for Respondent.

## EFFECTIVE DATE

VII. The effective date of this Order shall be the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's Counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or her designee signs it.

## DEFAULT

VIII. The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL, and shall constitute sufficient grounds for revocation of any permit, license, certification or approval issued to Respondent by DEC.

## MODIFICATION

IX. This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

## OTHER RIGHTS

X. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

DATED: \_\_\_\_\_, 2009  
Rotterdam, New York

Alexander B. Grannis  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

\_\_\_\_\_  
Eugene J. Kelly  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Village of Chatham

Respondent hereby consents to the issuing and entering of this Order, waives their right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

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

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a Notary Public in and for the State, personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Qualified in the County of:  
My Commission Expires:

SCHEDULE OF COMPLIANCE

<b>Respondent shall:</b>	<b>Due Date</b>
<p>I. Develop a plan and schedule to investigate and address the inflow and infiltration (I/I) from the collection system. This plan should also document any previous investigation or remediation activities and depict such work on maps and figures. Once approved by Department, the plan and schedule will become enforceable under this Order.</p>	<p>May 1, 2009</p>
<p>II. Prepare a Solids Handling Plan which includes seasonal MLSS concentration ranges, solids production and wasting calculations, and disposal options for sludge. The plan should also address sludge drying issues, particularly during the winter months, and the need to store solids in the oxidation ditches. Procedures for properly decanting of the digesters and transferring wastewater/solids between oxidation ditches should also be included.</p>	<p>May 1, 2009</p>
<p>III. Revise and/or update the Wet Weather Operation Plan and Preventive Maintenance Plan/Schedule for the plant for review and approval. A summary of the all plans should be laminated and posted inside of the treatment building for future reference. Once approved by Department, the plans shall be implemented.</p>	<p>May 1, 2009</p>
<p>IV. Conduct a comprehensive performance evaluation (CPE) of the plant by a Professional Engineer licensed to practice in New York State. The issues of equalization and sludge holding capacity at the plant and the contribution of flow from I/I and any planned future development should be considered. The CPE shall include the recommended enhancements and schedule for implementation. An interim limit for flow (i.e. monitor only) and percent removal for TSS (70%) shall be in effect on the SPDES permit until the completion of this task. Once approved by Department, the plan and schedule will become enforceable under this Order.</p>	<p>August 1, 2009</p>

## SEWER MORATORIUM

Until satisfactory completion of the Schedule of Compliance, no new sewer connections shall be made within the Respondent's sewer system except as follows:

- a) Connections shall be allowed to eliminate existing or potential public health nuisances or hazards.
- b) Relief can also be considered in certain cases where economic hardship can be clearly demonstrated.
- c) Other new connections shall be considered as work progresses on I&I removal pursuant to the Schedule of Compliance. Application of such relief shall be made to the Regional Water Engineer. Such application shall include, at a minimum, a description of the quantity of wastes and types of waste to be introduced to the system, an assessment of the capacity of the existing system to accept the additional flow without overloading the WWTP, an assessment of the effect of the additional discharge on the receiving water, the reduction of flow to the WWTP from remediation of I&I, if appropriate, and an evaluation of the overall environmental effect if the limited relief is not allowed. The Department will either approve or disapprove such application in writing.