

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

7011 1570 0003 0363 3956

February 17, 2016

David S. Merzig  
Kehoe & Merzig, PC  
8-12 Dietz Street, Suite 202  
Oneonta, NY 13820

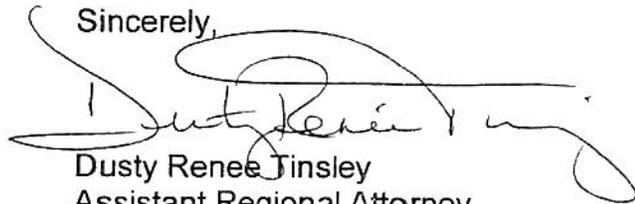
Re: Order on Consent  
R4-2015-1125-135  
City of Oneonta

Dear Mr. Merzig:

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

This will also acknowledge receipt of \$3500 of the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley  
Assistant Regional Attorney  
Region 4

Enclosure

ec: E. Cruden

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

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

**ORDER ON CONSENT**

DEC Case  
R4-2015-1125-135

By

City of Oneonta,

Respondent.

----- X  
WHEREAS:

**JURISDICTION**

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 City of Oneonta owns and operates a wastewater treatment plant (“WWTP”) located at 11 Silas Lane, Oneonta, New York 13820 (Otsego County) (“Facility”) that operates pursuant to a State Pollution Discharge Elimination System (“SPDES”) permit NY 0031151 (hereinafter “SPDES permit”), effective September 1, 2014. The WWTP discharges to the Susquehanna River.

**VIOLATION**

3. ECL §17-0701(1)(a) states that “It shall be unlawful for any person . . . to . . . Make or cause to make or use any outlet or point source for the discharge of sewage, industrial waste or other wastes or the effluent therefrom, into the waters of this state . . .”

4. ECL § 17-0807(4) states that “The following discharges into the waters of the state are hereby prohibited. . . any discharge not permitted by the provisions of this

article, rules and regulations adopted or applicable pursuant hereto, the Act, or provisions of a permit issued hereunder.”

5. 6 NYCRR Part 750-1.4(a) states that “(a) Except as provided in section 750-1.5(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 a discharge of any pollutant in a manner other than as prescribed by such permit.”

6. 6 NYCRR Subpart 750-2.8(b)(2) states that bypass of the treatment system is prohibited and the Department may take enforcement action against a permittee for bypass.

7. 6 NYCRR Subpart 750-2.8(a)(2) states that 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.”

8. The Permit states that “bypass of the collection and treatment system without treatment [is] prohibited”. Permit at Pg. 2.

9. The Permit states that “The permittee shall comply with all requirements set forth in this permit and with all applicable requirements of 6 NYCRR Part 750 incorporated into this permit by reference”. Permit at Pg. 16 Para. A.

10. On October 19, 2015, Respondent notified Department staff that Respondent suspected a sewer line break resulting in the release of raw sewage.

11. On October 27, 2015, Respondent confirmed a release of raw sewage from a break in a 30 inch diameter sewer line at the Susquehanna River Mill Race in the downtown area, in the vicinity of Damaschke Field in Neahwa Park (“Break Site”).

12. Respondent’s discharge of raw sewage into waters of the state due to a break in the sewer line is a violation of ECL § 17-0807(4), 6 NYCRR Part 750-1.4(a), and the Permit.

#### **CIVIL PENALTY**

13. ECL §71-1929 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 for 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

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

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

I. **Civil Penalty.** In respect to the Order's violations, a civil penalty of TEN THOUSAND DOLLARS (\$10,000) is assessed against the Respondent for the above violations of which THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500) 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. SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

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

II. **Schedule of Compliance.** Respondents shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Order and are enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact and phone number.

III. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

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

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **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.

VII. **Modification.** The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding, or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound pursuant to the provisions of the Order. No informal oral or written advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain such formal approvals as may be required by this Order.

VIII. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

X. **Scope.** 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, suits, causes of action or demands whatsoever that the State or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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. Review of Submitted Documentation.** 1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3.a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

**XII. Communications.** Communications shall be sent to

For Department:

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

For Respondent:

Gary Herzig, Mayor  
City of Oneonta  
City Hall  
258 Main Street  
Oneonta, New York 13820

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: 2/16/16, 2016  
Rotterdam, New York

Basil Seggos  
Acting Commissioner  
New York State Department of  
Environmental Conservation

BY:



---

Keith Goertz  
Regional Director  
Region 4



## Schedule of Compliance

A. By December 31, 2016, Respondent shall develop a written Collection System Asset Management Plan (“AMP”) in accordance with the U.S. EPA’s April 2008 “Asset Management: A Best Practices Guide.” The AMP will include the following information and any other information or measures inherent in the AMP development and implementation process, including but not limited to:

1. an inventory of assets (including both equipment and personnel);
2. an assessment of criticality, condition and lifespan of equipment under the full range of flows experienced;
3. a ranking and prioritization of asset maintenance and improvements; and
4. an itemized capital budget plan for funding and maintaining continuous compliance with its permit and regulations in 6 NYCRR Part 750 et seq.

Respondent shall update the AMP as necessary and make the AMP available to Department staff upon request.

***Compliance with this Order on Consent and Schedule of Compliance shall not be a defense to noncompliance by Respondent with its SPDES permit including all effluent limits.***