

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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CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 9135

December 19, 2018

Mr. Jim A. Caruso
Corporation Counsel
City of Troy
433 River Street
Troy, NY 12180

Re: Order on Consent
R4-2018-1010-186

Dear Mr. Caruso:

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

This will also acknowledge receipt of \$9,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: D. Thorsland
B. Starr

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

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”),

-by-

ORDER ON CONSENT
File No.: R4-2018-1010-186

City of Troy
433 River Street
Troy, NY 12180,

Respondent.

WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with responsibility for the protection of water resources of the State, pursuant to ECL Article 17, and the rules and regulations promulgated thereunder at 6 NYCRR Part 750.

Respondent

2. Respondent, the City of Troy, is a New York State municipality which owns the John P. Buckley Water Filtration Plant, located at 25 Water Plant Road in Troy, New York (“Facility”).

3. The Facility is subject to State Pollutant Discharge Elimination System (“SPDES”) Permit No: NY-0205401 (“Permit”) pursuant to 6 NYCRR 750-1.4(a), issued most recently with an effective date of May 1, 2016 and an expiration date of April 30, 2021.

4. Respondent is a person as defined by ECL § 17-105(1).

VIOLATIONS

Effluent Exceedances Violations

5. Respondent has executed and been subject to the following prior Orders on Consent (“Orders”) with the Department, along with their respective Schedules of Compliance (“Schedules”): R4-2002-1021-125, effective June 24, 2004; Order No. R4-

2009-0227-49, effective May 6, 2009; and Order No. R4-2012-0901-80, effective April 16, 2013.

6. Each Order cited above was executed by Respondent in settlement of SPDES violations at the Facility pertaining to effluent limitation exceedances for several substances from Facility Outfalls 001 and 003.

7. The Permit contains the following effluent discharge limits:

- Iron, total (daily maximum): 0.3 mg/L
- Manganese, total (daily maximum): 4.0 mg/L
- Manganese, total (monthly average): 2.0 mg/L
- Settleable solids (daily maximum): 0.1 mL/L
- Total suspended solids (daily maximum): 40 mg/L
- Total suspended solids (monthly average): 20 mg/L

8. Since the interim limitations in the previous Order (R4-2012-0901-80) concluded as of December 31, 2014, the Discharge Monitoring Reports (“DMR”s) submitted by Respondent have indicated the following continuing violations of the Facility’s discharge limits:

Summary of Effluent Exceedances							
Outfall	Parameter	Type	Units	Date	Limit	Result	Percent
001X	Chlorine, total residual	Daily Mx	mg/L	01/31/2015	0.02	0.03	50%
003X	Chlorine, total residual	Daily Mx	mg/L	03/31/2016	0.02	0.05	150%
003X	Chlorine, total residual	Daily Mx	mg/L	04/30/2016	0.02	0.03	50%
001X	Chlorine, total residual	Daily Mx	mg/L	09/30/2016	0.02	0.03	50%
001X	Chlorine, total residual	Daily Mx	mg/L	01/31/2017	0.02	0.03	50%
001X	Chlorine, total residual	Daily Mx	mg/L	03/31/2017	0.02	0.06	200%
001X	Chlorine, total residual	Daily Mx	mg/L	11/30/2017	0.02	0.03	50%
001X	Chlorine, total residual	Daily Mx	mg/L	12/31/2017	0.02	0.06	200%
001X	Chlorine, total residual	Daily Mx	mg/L	01/31/2018	0.02	0.04	100%
001X	Iron, total [as Fe]	Daily Mx	mg/L	02/28/2015	0.30	0.41	37%
001X	Iron, total [as Fe]	Daily Mx	mg/L	03/31/2015	0.30	0.35	17%
001X	Iron, total [as Fe]	Daily Mx	mg/L	06/30/2015	0.30	0.51	70%
001X	Iron, total [as Fe]	Daily Mx	mg/L	10/31/2015	0.30	1.20	300%
001X	Iron, total [as Fe]	Daily Mx	mg/L	11/30/2015	0.30	0.31	3%
001X	Iron, total [as Fe]	Daily Mx	mg/L	02/28/2017	0.30	0.94	213%
001X	Iron, total [as Fe]	Daily Mx	mg/L	04/30/2017	0.30	0.55	83%
001X	Iron, total [as Fe]	Daily Mx	mg/L	08/31/2017	0.30	0.31	3%
001X	Iron, total [as Fe]	Daily Mx	mg/L	10/31/2017	0.30	0.33	11%
001X	Iron, total [as Fe]	Daily Mx	mg/L	07/31/2018	0.30	3.19	963%
001X	Iron, total [as Fe]	Daily Mx	mg/L	08/31/2018	0.30	0.72	141%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	01/31/2015	4.00	4.69	17%

001X	Manganese, total [as Mn]	Daily Mx	mg/L	02/28/2015	4.00	10.00	150%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	03/31/2015	4.00	7.40	85%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	10/31/2015	4.00	25.00	525%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	11/30/2015	4.00	6.90	73%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	09/30/2016	4.00	4.30	8%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	10/31/2016	4.00	8.94	124%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	08/31/2017	4.00	5.92	48%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	09/30/2017	4.00	4.72	18%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	10/31/2017	4.00	11.40	185%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	11/30/2017	4.00	5.02	26%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	07/31/2018	4.00	6.71	68%
001X	Manganese, total [as Mn]	Daily Mx	mg/L	08/31/2018	4.00	13.60	240%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	01/31/2015	2.00	2.59	30%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	02/28/2015	2.00	10.00	400%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	03/31/2015	2.00	3.93	97%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	06/30/2015	2.00	2.29	15%
003X	Manganese, total [as Mn]	Mo Avg	mg/L	07/31/2015	2.00	2.10	5%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	09/30/2015	2.00	3.20	60%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	10/31/2015	2.00	24.50	1125%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	11/30/2015	2.00	6.05	203%
003X	Manganese, total [as Mn]	Mo Avg	mg/L	07/31/2016	2.00	3.20	60%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	09/30/2016	2.00	3.50	75%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	10/31/2016	2.00	6.46	223%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	07/31/2017	2.00	2.65	33%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	08/31/2017	2.00	5.92	196%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	09/30/2017	2.00	3.10	55%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	10/31/2017	2.00	7.75	288%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	11/30/2017	2.00	3.64	82%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	02/28/2018	2.00	2.47	24%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	04/30/2018	2.00	2.54	27%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	06/30/2018	2.00	2.50	25%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	07/31/2018	2.00	5.22	161%
001X	Manganese, total [as Mn]	Mo Avg	mg/L	08/31/2018	2.00	13.60	580%
001X	Solids, settleable	Daily Mx	mL/L	10/31/2015	0.10	5.00	4900%
003X	Solids, settleable	Daily Mx	mL/L	07/31/2016	0.10	0.20	100%
001X	Solids, settleable	Daily Mx	mL/L	02/28/2017	0.10	0.20	100%
001X	Solids, settleable	Daily Mx	mL/L	05/31/2018	0.10	1.00	900%
001X	Solids, total suspended	Daily Mx	mg/L	10/31/2015	40.00	82.00	105%
001X	Solids, total suspended	Daily Mx	mg/L	07/31/2018	40.00	92.25	131%
001X	Solids, total suspended	Mo Avg	mg/L	01/31/2015	20.00	26.70	34%
001X	Solids, total suspended	Mo Avg	mg/L	10/31/2015	20.00	46.00	130%
001X	Solids, total suspended	Mo Avg	mg/L	07/31/2018	20.00	47.18	136%

9. ECL § 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.”

10. Regulation 6 NYCRR § 750-2.1(e) states that permittees “must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for: enforcement action; for permit suspension, revocation or modification; and for denial of a permit renewal application.”

11. Respondent’s persistent exceedances of the Facility’s effluent discharge limits are violations of ECL § 17-0511 and 6 NYCRR § 750-2.1(e).

Submissions Violations

12. On January 5, 2018, Department staff issued a Notice of Violation (“NOV”) to Respondent which cited, in addition to effluent discharge limit and DMR violations, required updates to the Lagoon System Operation and Maintenance Plan, and submission of complete Water Treatment Chemical (“WTC”) forms both for new WTCs and WTCs whose dosages exceed authorized limits.

13. Regulation 6 NYCRR § 750-2.1(i) states that permittees “shall furnish to the department, within a reasonable time as set forth in the department request, any information that the department may request to determine whether cause exists for modifying, suspending, or revoking a SPDES permit, or to determine compliance with the permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.”

14. Respondent’s failure address the requirements in the January 5, 2018 NOV by not submitting complete documentation as described above is a continuing violation of 6 NYCRR § 750-2.1(i).

Waiver of Hearing

15. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and it agrees to be bound by the terms, provisions and conditions contained herein.

Civil Penalty

16. ECL § 71-1929(1) provides that: “A person who violates any of the provisions 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.”

NOW, being duly advised and having considered this matter, it is **ORDERED THAT:**

I. **Civil Penalty.** With respect to the Order’s violations, the amount of FIFTY THOUSAND, NINE HUNDRED FORTY-FIVE DOLLARS (\$50,945) is assessed against the Respondent. NINE THOUSAND, FIVE HUNDRED (\$9,500) of the civil penalty shall be paid to the Department by company or bank check made payable to “NYS Department of Environmental Conservation” at the time this Order is signed, notarized, and returned to the Department. Payment of this portion of the civil penalty shall not in any way alter Respondent’s obligation to complete performance under the terms of the Modified Order.

The balance of the penalty, FORTY-ONE THOUSAND, FOUR HUNDRED FORTY-FIVE DOLLARS (\$41,445), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order and its Schedule of Compliance in a timely fashion. If Respondent fails to comply with any such requirements, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent, in addition to appropriate penalties for any further violations of this Order.

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order, including the attached Schedule of Compliance, and any plans approved pursuant thereto are incorporated into this Order and are enforceable hereunder. Any records submitted to the Department shall include the owner’s name, facility name and address, contact name, 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 under or controlled by it.

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 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 the provisions hereof by Respondent, its directors, officers, employees, agents, successors or assigns.

VII. **Modification.** 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, such change to be made only upon written agreement of the parties.

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 for the Department 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. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable thereafter.

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 for any other violations of the ECL, rules or regulations promulgated thereunder;

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

D. Whatever right the Department may have to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, 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 Respondent's submittals pursuant to this Order to determine whether it was prepared, and whether the work performed 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 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 the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal 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 submittal 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:

New York State Department of Environmental Conservation
Region 4
1130 North Westcott Road
Schenectady, NY 12306
Attn: Regional Engineer

For Respondent:

City of Troy
433 River Street
Troy, NY 12180
Attn: Patrick Madden, Mayor

DATED: Rotterdam, New York
December 18, 2018

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

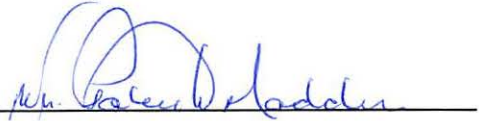
BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT


Respondent, City of Troy, hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

SIGNED: 
TITLE: Mayor
DATE: 12-13-2018

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

On the 13th day of DECEMBER in the year 2018, before me, the undersigned, personally appeared Mr. Patrick MacLellan, personally known (Full name)

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 s/he executed the same in his/~~her~~ capacity, and that by his/~~her~~ signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public JAMES A. CARUSO
Qualified in the County of: RENSSELAER
My Commission Expires: 05/31/2019

SCHEDULE OF COMPLIANCE

1. **Within thirty (30) days of the Effective Date of the Order**, Respondent shall submit to the Department completed Water Treatment Chemical (“WTC”) forms for all new water treatment chemicals, and those with usages above authorized limits.
2. **Within sixty (60) days of the Effective Date of the Order**, Respondent shall update and submit to the Department the Lagoon System Operation and Maintenance Plan to incorporate procedures to avoid effluent limitation exceedances during “flumping” (i.e., floating pump) operations.
3. **Within ninety (90) days of the Effective Date of the Order**, Respondent shall develop and submit to the Department a plan to remove all accumulated sludge from both the upper and lower lagoons to achieve sustainable SPDES compliance using a third-party contractor. This plan shall provide for:
 - a. Complete isolation of each lagoon (no discharge) while sludge is being removed, as well as measures to ensure SPDES permit compliance during return-to-service following sludge removal operations; and
 - b. A schedule for work to commence no later than May 1, 2019 and to be completed no later than September 30, 2019.
4. The following interim effluent limitations, approximated based on the 2018 reported values (95th percentile for monthly average limits and 99th percentile for daily maximum limits with the extreme outliers omitted), shall apply to both Outfall 001 and Outfall 003 for a period beginning on the Effective Date of the Order, until September 30, 2019:

PARAMETER	INTERIM EFFLUENT LIMITATIONS	
	Value	Units
Iron, Total (Daily Max.)	0.6	mg/l
Manganese, Total (Monthly Avg.)	4.0	mg/l
Manganese, Total (Daily Max.)	6.0	mg/l