

**New York State Department of Environmental Conservation
Office of General Counsel, Region 4**

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0716

September 16, 2014

Robert J. Fitzsimmons, Esq.
Columbia County Attorney
401 State Street
Hudson, NY 12534

Re: Order on Consent
Wastewater Treatment Plant
SPDES Permit Violation
R4-2014-0715-129

Dear Mr. Fitzsimmons:

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

This will also acknowledge receipt of \$2,800 of the civil penalty pursuant to Paragraph I.

Sincerely,

Richard Ostrov
Regional Attorney
Region 4

Enclosure

cc: A. Dzierwa
J. Malcolm

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations 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,

Order on Consent

DEC Case #
R4-2014-0715-129

- By-

Columbia County
Respondent.

WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation (“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 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, Columbia County, owns and operates a wastewater treatment plant (“WWTP”) for the treatment of sanitary wastewater from the commercial/light industrial facilities located within the Commerce Center and other businesses located along New York State Route 66 and is permitted to discharge 50,000 gallons per day (“gpd”) to Mud Creek via Outfall No. 001 pursuant to State Pollutant Discharge Elimination System Permit No. NY0240401 (“permit”). Mudd Creek is a Class C waterbody at this location.

Violations

5. Respondent has submitted monthly discharge monitoring reports (“DMRs”) to the Department as required by its permit. The DMRs show violations of permit effluent limits for pH (daily minimum/maximum) --15 months, TSS (daily maximum) --13 months, and BOD (daily maximum) – 28 months. Appendix A contains a list of the violations by effluent limit.

6. The Respondent reported permit effluent limits found in Appendix A are violations of 6 NYCRR 750-2.1(e) effluent limit violations for outfall No. 001:

Civil Penalties

8. ECL Section 71-1929 provides for a civil penalty of up to \$37,500 per day for a violation of any provision 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.

Waiver of Hearing

9. 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 agrees to be bound by the terms, provisions and conditions contained within this Order.

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

I. In respect of the aforesaid violations, Respondent is assessed a civil penalty in the amount of ELEVEN THOUSAND TWO HUNDRED (\$11,200). TWO THOUSAND EIGHT HUNDRED DOLLARS (\$2,800) of the civil penalty is due with return of the signed and notarized Order to the Department. SEVEN THOUSAND FOUR HUNDRED DOLLARS (\$7,400) of the civil penalty is suspended conditioned on Respondents' compliance with the Order on Consent's Schedule of Compliance. Respondent shall pay the suspended penalty within 30 days of receipt of a Notice of Violation from the Department setting forth the nature of the violations. Respondent shall have 30 days from the date of receipt of the Notice of Violation to cure the violations and if the violations are cured within the 30 day period then no suspended penalty is due. The suspended penalty provision shall not limit the Department or State's right to seek other remedies provided by law and the applicable regulations for violations of this Order on Consent and ECL Article 17 and regulations, respectively.

II. Respondent shall comply with the attached Schedule of Compliance and any plans or documents submitted and approved pursuant to the Schedule of Compliance.

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

IV. 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. All written communications except where otherwise specifically directed should 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:

Commissioner
Columbia County DPW
401 State Street
Hudson, New York 12534

VI. 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 or otherwise provided herein.

VII. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department or their representatives shall be permitted access to the WWTP to inspect premises, records and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

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

IX. 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.

X. (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 submittals 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 twenty (20) 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. This shall be considered a violation of the Order. The Respondent reserves its right to contest the alleged violation.

XI. 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 may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder based upon other than the events addressed herein.

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, their 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 waive 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 on Consent and whether or not this Order on Consent has been entered into voluntarily by Respondent.

XII. This Order on Consent shall terminate upon Respondent's complete compliance with all the terms, provisions and conditions of this Order on Consent and Schedule of Compliance.

DATED: Rotterdam, NY
~~August 15~~, 2014
September

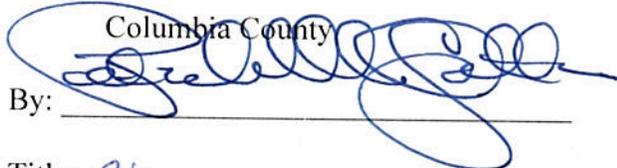
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

BY: 

Keith Goertz
Acting Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

Columbia County
By: 

Title: *Chairman*

Date: *9/10/14*

ACKNOWLEDGMENT

State of New York)

ss:

County of *Columbia*)

On this *10* day of *September*, 2014, before me personally came *Patrick M. Grattan*, to me known, who being by me duly sworn did depose and say that (s)he resides in *Valatie NY*, that (s)he is *Chairman* of the municipality described in and which executed the foregoing instrument, and that (s)he signed his/her name as authorized by said municipality.


Notary Public

ROBERT J FITZSIMMONS
NOTARY PUBLIC - STATE OF NEW YORK
No. 02F16020790
Qualified in Columbia County
Comm. Expires March 08, 2015

Schedule of Compliance

1. Within 60 days of the effective date of the Order, Respondent shall submit to the Department, an Engineer's Report ("report") prepared by a third party independent licensed professional engineer licensed to practice in New York that evaluates the operation of the WWTP and identifies any necessary upgrades or replacement of the WWTP unit processes along including a plan and schedule for design, permitting and construction. All system design and operation shall comply with the Department's Design Standards for Wastewater Treatment Works (2014) and the terms of the existing SPDES permit (No. NY0240401). Once approved by Department, the report including approved plan and schedule will become enforceable under the terms of this Order. The report shall include a statement of the professional engineer that the plant shall be fully operational and fully compliant with the existing SPDES permit on or before June 1, 2015 after completing the approved plan.
2. Compliance with above measures shall not be a defense to any violation of a SPDES permit, the ECL or regulations promulgated thereunder.

Appendix A

**Violation Summary:
Outfall No. 001**

**Parameter: pH
Permit Limit Range: 6.5 - 8.5 s.u. (Daily Minimum/Maximum)**

DMR	Reported Value
January 2011	8.7 s.u.
February 2011	8.9 s.u.
June 2011	8.7 s.u.
September 2011	8.7 s.u.
October 2011	8.9 s.u.
November 2011	8.6 s.u.
April 2012	8.8 s.u.
November 2012	8.7 s.u.
February 2013	9.3 s.u.
July 2013	8.7 s.u.
October 2013	8.6 s.u.
November 2013	9.4 s.u.
December 2013	8.7 s.u.
February 2014	9.2 s.u.
February 2014	5.6 s.u.

**Parameter: TSS
Permit Limit: 10 mg/L (Daily Maximum)**

DMR	Reported Value
September 2010	16.0 mg/L
May 2011	19.5 mg/L
September 2011	13.0 mg/L
October 2011	13.0 mg/L
December 2011	14.0 mg/L
August 2012	13.0 mg/L
May 2013	12.0 mg/L
July 2013	15.0 mg/L
August 2013	29.0 mg/L
October 2013	11.0 mg/L
November 2013	28.0 mg/L
March 2013	22.0 mg/L
May 2014	13.0 mg/L

Parameter: BOD
Permit Limit: 5 mg/L (Daily Maximum)

DMR	Reported Value
September 2010	16.0 mg/L
October 2010	6.0 mg/L
December 2010	9.0 mg/L
May 2011	11.5 mg/L
June 2011	6.0 mg/L
August 2011	6.0 mg/L
September 2011	8.0 mg/L
October 2011	17.0 mg/L
November 2011	7.0 mg/L
December 2011	11.0 mg/L
January 2012	6.0 mg/L
April 2012	6.0 mg/L
May 2012	6.0 mg/L
June 2012	7.0 mg/L
July 2012	6.0 mg/L
August 2012	11.0 mg/L
October 2012	7.0 mg/L
November 2012	6.0 mg/L
May 2013	14.0 mg/L
June 2013	7.0 mg/L
July 2013	15.0 mg/L
August 2013	24.0 mg/L
September 2013	9.0 mg/L
October 2013	9.0 mg/L
November 2013	15.0 mg/L
February 2014	6.0 mg/L
March 2014	14.0 mg/L
May 2014	12.0 mg/L