

**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 4069

March 9, 2016

Robert J. Fitzsimmons  
Columbia County Attorney  
401 State Street, Suite 2B  
Hudson, NY 12534

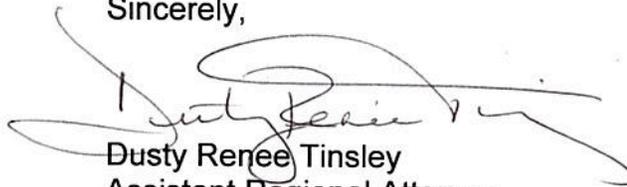
Re: Order on Consent  
R4-2016-0108-05

Dear Mr. Fitzsimmons:

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

This will also acknowledge receipt of \$5000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley  
Assistant Regional Attorney  
Region 4

Enclosure

ec: J. Malcolm



Department of  
Environmental  
Conservation

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

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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

**ORDER ON CONSENT  
("Order")**

By

R4-2016-0108-05

Columbia County,

Respondent.

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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.

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. The WWTP is permitted to discharge 50,000 gallons per day to Mud Creek via Outfall No. 001 pursuant to State Pollution Discharge Elimination System Permit No. NY0240401 ("Permit") based on the effluent limitations contained therein. Mudd Creek is a Class C waterbody at this location.

**Compliance History**

3. Respondent entered into an Order on Consent (R4-2000-0516-33) effective June 9, 2000 ("2000 Order") regarding violations of Article 17 of the ECL and 6 NYCRR due to bypasses associated with the high flow conditions and Permit violations.

4. Respondent entered into an Order on Consent (R4-2010-1021-119) in February of 2011 for violations documented on its Discharge Monitoring Reports ("DMRs") ("2011 Order"). This Order was modified, effective April 30, 2012, to revise the Schedule of

Compliance regarding submission of design plans related to plant improvements (“2012 Modification”).

5. Respondent entered into an Order on Consent (R4-2014-0715-129) effective September 15, 2014 (“2014 Order”).
6. Respondent was sent a Notice of Violation dated September 15, 2015 requiring full/consistent compliance with the Permit within thirty days or the suspended penalty from the 2014 Order was to be submitted followed by further enforcement action.
7. Respondent paid the suspended penalty referenced in the 2014 Order.

### Violations

8. ECL §17-0511 states “The use of existing or new outlets or point sources, which discharge sewage, industrial waste 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.”
9. 6 NYCRR Part 750-2.1(e) states that Respondent is to comply with all the terms and conditions of its SPDES permit.
10. Respondent’s SPDES Permit sets forth the following effluent limitations from Outfall No. 001: TSS – 10 mg/L (Daily Maximum); BOD – 5 mg/L (Daily Maximum); and Total Nitrogen (as NH<sub>3</sub>) – 1.5 mg/L (Daily Maximum).
11. Respondent submitted DMRs containing the following exceedances from Outfall No. 001:

DMR	Parameter	Reported Value (mg/L)
August 2014	TSS	21.0
November 2014	TSS	12.0
December 2014	TSS	50.0
April 2015	TSS	12.0
May 2015	TSS	13.0
June 2015	TSS	13.0
July 2015	TSS	14.0
June 2014	BOD	9.0
July 2014	BOD	20.0
August 2014	BOD	22.0
October 2014	BOD	16.0
November 2014	BOD	15.0
December 2014	BOD	12.0
January 2015	BOD	11.0
February 2015	BOD	10.0

March 2015	BOD	9.0
April 2015	BOD	13.0
May 2015	BOD	28.0
June 2015	BOD	24.0
July 2015	BOD	13.0
August 2015	BOD	6.0
October 2015	BOD	6.0
November 2015	BOD	12.0
May 2015	Total Nitrogen (as NH <sub>3</sub> )	1.77

12. Respondent's Permit effluent limitation exceedances stated in Paragraph 11 are violations of ECL §17-0511, 6 NYCRR Part 750-2.1(e), and Respondent's 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 for EIGHT THOUSAND DOLLARS (\$8,000) is assessed against the Respondent for the above violations of which FIVE THOUSAND DOLLARS (\$5,000) 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. THREE THOUSAND DOLLARS (\$3,000) 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.** Respondent 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 advise, 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:

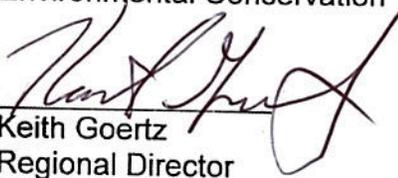
Rob Fitzsimmons, County Attorney  
Columbia County  
401 State Street  
Hudson, New York 12534

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

DATED: March 8, 2016  
Rotterdam, New York

Basil Seggos  
Acting Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
Keith Goertz  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Respondent Columbia County 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.

BY: Matt Murell

TITLE: Chairman of Board

DATE: 2-17-16

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

On this 17<sup>th</sup> day of February 2015, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn did depose and say that he resides in Matt Murell, that he is the Chairman of the municipality described in and which executed the foregoing instrument, and that he signed his name as authorized by said municipality.

Rita M. LaCasse  
Notary Public, State of New York

Rita M. LaCasse  
NOTARY PUBLIC • State of New York  
No. 01LA6308742  
Qualified in Columbia County  
Commission Expires July 28, 2018

## SCHEDULE OF COMPLIANCE

Respondent shall:	Deadline
<p>Submit to the Department an approvable Engineer's Report of alternatives to the existing WWTP prepared by a third party professional engineer licensed to practice in New York State. The report shall include a desktop study and cost estimate for replacement of all on-site WWTP equipment with a suitable technology (e.g. sequencing batch reactors) versus installing a force main to a nearby wastewater treatment plant. Project costs can be prepared using standard engineering guides (e.g. RSMeans, Dodge Data &amp; Analytics, or other national standards). All system design and operation must comply with the Department's Design Standards for Wastewater Treatment Works (2014) and the terms of the existing SPDES Permit (No. NY0240401).</p>	<p>August 1, 2016</p>
<p>Select a final alternative and submit to the Department an approvable Facility Report with related engineering plans and a construction schedule. The construction schedule contained in the Facility Report should be developed with the project being fully completed by December 1, 2019. Once approved, the Facility Report will become enforceable under this Order.</p>	<p>March 1, 2017</p>
<p>An interim limit for BOD (24 mg/L) and TSS (21 mg/L) shall be in effect upon the effective date of this Order and continue until the final alternative has been fully constructed.</p>	<p>The effective date of this Order through, at the latest, December 1, 2019</p>
<p>If an on-site system is present, the interim limits will be in effect during plant startup and continue for a period of six months. All other SPDES Permit parameter limits will remain in effect.</p>	<p>December 1, 2019 through June 1, 2020</p>