

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
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CERTIFIED - RETURN RECEIPT REQUESTED
7013 1090 0002 3365 4844

September 24, 2015

Mr. Keith Langley, Supervisor
Town of East Greenbush
Wastewater Treatment Plant
225 Columbia Turnpike
Rensselaer, NY 12144

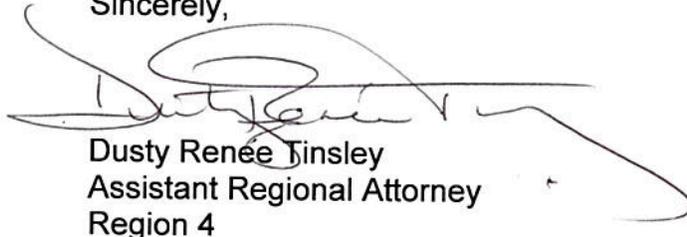
Re: Order of Consent
R4-2015-0818-99

Dear Mr. Langley:

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

This will also acknowledge receipt of \$5,595 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: D. Thorsland
A. Dzierwa

**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 (6 NYCRR)

ORDER ON CONSENT
R4-2015-0818-99
Permit # NY0026034

By

Town of East Greenbush,

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 Town of East Greenbush owns and operates a wastewater treatment plant ("WWTP") located on Columbia Turnpike, East Greenbush, New York 12144 (Rensselaer County) that operates pursuant to a State Pollution Discharge Elimination System ("SPDES") permit NY-0026034 (hereinafter "SPDES Permit").

Violations

3. 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."
4. 6 NYCRR Part 750-2.1(e) states that Respondent is to comply with all the terms and conditions of its SPDES permit.

5. Respondent's SPDES Permit sets forth effluent limitations, including as follows:

Parameter	Effluent Limit				
	Type	Limit	Units	Limit	Units
5-day biochemical oxygen demand (BOD5)	Monthly Avg	25	mg/l	520	lbs/d
BOD5	7-Day Avg	45	mg/l	940	lbs/d
Total suspended solids (TSS)	Monthly Avg	30	mg/l	630	lbs/d
TSS	7-Day Avg	45	mg/l	940	lbs/d
Total kjeldhal nitrogen (TKN)	Daily Avg	Monitor	mg/l		
TKN	Daily Max	20	mg/l		
Fecal Coliform	Monthly GM	200	#/100ml		
Fecal Coliform	7-Day GM	400	#/100ml		

SPDES Permit, Permit Limits, Levels and Monitoring, Page 4 of 9.

6. Below is a list of SPDES permit effluent limit exceedances identified in Respondent's monthly Discharge Monitoring Reports ("DMR's"):

Parameter	Date	Exceedance
BOD5 (Monthly avg.)	February 2015	98.8
BOD5 (Monthly avg.)	March 2015	164
BOD5 (Monthly avg.)	April 2015	87
BOD5 (Monthly avg.)	May 2015	33.1
BOD5 (Monthly avg.)	June 2015	27.2
TSS (Monthly avg.)	February 2015	46
TSS (Monthly avg.)	March 2015	53
TSS (Monthly avg.)	April 2015	42
TSS (7-day avg.)	May 2015	51
TKN (daily max.)	January 2015	38.6
TKN (daily max.)	March 2015	32.1
TKN (daily max.)	April 2015	23.8
TKN (daily max.)	May 2015	31.2
TKN (daily max.)	June 2015	26
Fecal Coliform (30-day GM)	May 2015	30055
Fecal Coliform (30-day GM)	June 2015	44955

7. Respondent's SPDES Permit effluent limitation exceedances stated in Paragraph 6 for BOD5, TSS, TKN, and Fecal Coliform are violations of ECL §17-0511, 6 NYCRR Part 750-2.1(e), and Respondent's SPDES Permit.

Civil Penalty

8. 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

9. 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 FIFTEEN THOUSAND FIVE HUNDRED NINETY FIVE DOLLARS (\$15,595) is assessed against the Respondent for the above violations of which FIVE THOUSAND FIVE HUNDRED AND NINETY FIVE DOLLARS (\$5,595) 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. TEN THOUSAND DOLLARS (\$10,000) 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 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. **Default.** Respondent shall not be in default of compliance with this Order if they are unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war strike, riot, or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify the Department in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

XIII. **Third Parties.** This Order shall not create any presumption of law or fact that shall inure to the benefit of any person other than the Department, State, or Respondent.

XIV. **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:

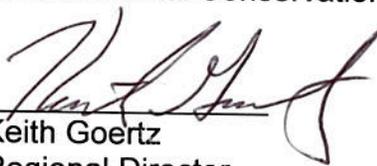
Keith Langley, Supervisor
Town of East Greenbush WWTP
225 Columbia Turnpike
East Greenbush, New York 12144

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

DATED: September 24, 2015
Rotterdam, New York

Marc Gerstman
Acting Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Respondent shall, within 30 days of the effective date of this Order, submit to the Department a corrective action plan to optimize WWTP performance and minimize odors during the remaining WWTP upgrades.

2. Respondent shall, within 30 days of the effective date of this Order, submit to the Department a plan for completion, by December 31, 2015, of all remaining WWTP upgrades.

3. The following interim effluent limitations based on reported values (95th percentile for monthly and seven day average limits and 99th percentile for daily maximum limits) shall apply beginning on the effective date of the Order and continue through February 28, 2016. Percent removal requirements are waived while the interim effluent limitations apply.

PARAMETER	INTERIM EFFLUENT LIMITATIONS	
	Value	Units
BOD5 (Monthly Avg.)	80	mg/l
BOD5 (7-Day Avg.)	120	mg/l
BOD5 (Monthly Avg.)	1670	lbs/d
BOD5 (7-Day Avg.)	2500	lbs/d
TSS (Monthly Avg.)	40	mg/l
TSS (7-Day Avg.)	60	mg/l
TSS (Monthly Avg.)	835	lbs/d
TSS (7-Day Avg.)	1250	lbs/d
TKN (Daily Max.)	38	mg/l
Fecal Coliform (30-Day Geo. Mean)	Monitor	#/100 ml
Fecal Coliform (7-Day Geo. Mean)	Monitor	#/100 ml