

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

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March 11, 2016

Carl G. Whitbeck, Jr.
Rapport Meyers LLP
Attorneys at Law
436 Union Street
Hudson, NY 12534

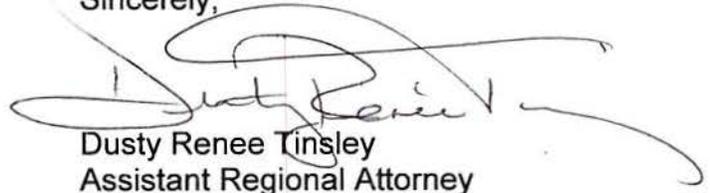
Re: Order on Consent
Town of Greenport
R4-2015-1204-136

Dear Mr. Whitbeck:

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

This will also acknowledge receipt of \$2000 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 (6 NYCRR) Part 750, et seq.

**ORDER ON
CONSENT**

R4-2015-1204-136

By

Town of Greenport
52 Utility Drive
Hudson, New York 12534,

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.

Respondent

2. Respondent Town of Greenport owns and/or operates the Greenport Wastewater Treatment Plant located at 52 Utility Drive, Hudson, New York 12534 (hereinafter "Facility") that operates pursuant to a State Pollution Discharge Elimination System ("SPDES") permit NY-0030988 (hereinafter "SPDES Permit").

First Violation

3. ECL §17-0511 states that "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 "The permittee 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.”

5. Eleven homeowners reported to the Respondent basement backups, line blockages, and/or manhole discharges (collectively and individually referred to as “sanitary sewer overflows”) during wet weather conditions on June 25, 2014. Respondent notified the Department of these sanitary sewer overflows.

6. Twelve homeowners reported to the Respondent sanitary sewer overflows on September 30, 2015. Respondent notified the Department of these sanitary sewer overflows.

7. The sanitary sewer overflows from Respondent’s Facility on August 11, 2014 and September 30, 2015 are violations of ECL §17-0511, 6 NYCRR Part 750-2.1(e), and Respondent’s SPDES Permit.

Second Violation

8. 6 NYCRR Part 750-2.7(f) states that “The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit, which has a reasonable likelihood of adversely affecting human health or the environment.”

9. Department staff issued to Respondent an August 11, 2014 Notice of Violation (“NOV”) related to the June 25, 2014 sanitary sewer overflows which required a formal plan and schedule be prepared to address the sanitary sewer overflows (“Plan”). The Plan did not contain formal recommendations for investigation of the sanitary or stormwater collection systems.

10. Further sanitary sewer overflows occurred on September 30, 2015.

11. Since the September 30, 2015 sanitary sewer overflows, Respondent has taken action to address the issue.

12. Respondent’s failure to take all reasonable steps to minimize or prevent any discharge in violation of the permit, which has a reasonable likelihood of adversely affecting human health or the environment, resulting in the September 30, 2015 sanitary sewer overflows is a violation of 6 NYCRR Part 750-2.7(f) and Respondent’s SPDES Permit.

Civil Penalty

13. ECL Section 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.

14. **Waiver of Hearing.** 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 NINE THOUSAND THREE HUNDRED DOLLARS (\$9,300) is assessed against the Respondent for the above violations of which TWO THOUSAND DOLLARS (\$2,000) 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. SEVEN THOUSAND THREE HUNDRED DOLLARS (\$7,300) 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:

Edward F. Nabozny
Town Supervisor
Town of Greenport
600 Town Hall Drive
Greenport, New York 12309-4381

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

DATED: March 10, 2016
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

Schedule of Compliance

Respondent Shall:	Due Date:
<p>I. Submit a report as prepared by a Professional Engineer licensed to practice in New York State that estimates the removal of I&I in the sanitary sewer collection system at locations upstream or downstream of the connection for The Falls project (116 apartments to be located at the former Greenport Elementary School at 158 Union Turnpike). The report shall also document that sufficient hydraulic capacity exists downstream of the proposed connection, that a 4:1 offset (I&I removed to new flow) will be achieved before the connection is placed into service, the absence of any sanitary sewer overflows reported in the sanitary sewer collection system at locations upstream or downstream from this proposed connection, and that provisions for storing/retaining flow during wet weather will be required by the Town. Any future proposed connections (i.e. Greenport Gardens) will require a formal request to discharge from the developer to the Town, formal approval by the Town to the Department stating that hydraulic and organic loading capacity exists at the WWTP along with hydraulic capacity in the collection system, and the submittal of a Sewer Extension Request from the developer and the Town to the Department for review/approval.</p>	<p>On or before March 15, 2016</p>
<p>II. Commence an investigation prepared by a Professional Engineer licensed to practice in New York State to identify the removal of potential sources of I&I from the sanitary sewer collection system and reduce the potential for sanitary sewer overflows ("Investigation"). The Investigation shall include the following topics/areas/sources at a minimum: (1) illegal residential connections (i.e. basement sump pumps, foundation drains, roof leaders, etc.) and the status of the residential inspection program (i.e. number of inspections completed, number of illegal connections removed, etc.); (2) stormwater generated on the Colarusso Mine and Cedar Park Cemetery properties locate don Newman Road; (3) stormwater impacts to the sanitary sewer collection system located on Milo Street; and (4) use of backflow preventers to reduce basement backups.</p> <p>An interim report setting forth the actions taken as part of the Investigation with a plan/schedule that identifies a short term feasible strategy to eliminate related sanitary sewer overflows (SSO) with all necessary work to be completed on or before December 31, 2016.</p>	<p>On or before May 2, 2016</p>

<p>A final approvable investigation report detailing the findings and actions taken as a result of the Investigation. Once approved by the Department, the plan and schedule will become enforceable under the terms of this Order.</p>	<p>On or before December 31, 2016</p>
<p>III. Submit an approvable long term Sanitary Sewer Overflow Mitigation Plan as prepared by a Professional Engineer licensed to practice in New York State. The plan shall include a schedule with annual milestone dates with a completion date of no later than December 31, 2020. Once approved by the Department, the plan and schedule will become enforceable under the terms of this Order.</p>	<p>On or before March 2, 2017</p>