

**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  
7016 0340 0000 4616 5423

March 15, 2017

Ms. Megan M. Manion, Esq.  
Montgomery County Attorney  
County Annex Building  
P.O. Box 1500  
20 Park St.  
Fonda, NY 12068-1500

Re: Order on Consent  
R4-2016-0627-122  
Montgomery County

Dear Ms. Manion:

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

This will also acknowledge receipt of \$1,750 the civil penalty pursuant to Paragraph I.

Sincerely,

*Karen S. Lavery / JV*

Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: E. Cruden  
D. Thorsland

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged  
Violations of Environmental  
Conservation Law Article 17

-by-

ORDER ON CONSENT  
File No. R4-2016-0627-122

Montgomery County Sanitary District No. 1  
28 Old Station Road  
Nelliston, N.Y. 13410

Respondent

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WHEREAS:

1. The Department of Environmental Conservation ("Department" or "DEC") is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated thereto.
2. Respondent is a person as defined at ECL §17-0105(1).
3. Respondent, Montgomery County Sanitary District No. 1, located at 28 Old Station Road, Nelliston, New York ("the District") has a State Pollutant Discharge Elimination System ("SPDES") permit No. NY0107565 ("permit").

First Violation

4. The District is currently under an Order on Consent with the Department (R4-2009-0715-115), effective November 23, 2009. This Order was modified effective December 22, 2010 for the purpose of extending certain deadlines.
5. The Order's Schedule of Compliance, in part, required,
  - *"The District's Sewer Use Ordinance and municipal agreements shall be updated immediately if it does not adequately require all municipalities owning upstream*

*collection systems to comply with the removal of illegal connections, storm sewers, illicit sources of inflow, and excessive flows.”*

6. Respondent’s failure to complete the item set forth in paragraph Number 4 above is a violation of the Order’s Schedule of Compliance.

Second Violation

7. Respondent has incurred the following:

**Overflow/Unapproved bypass events (2011 to present)**

2016 – 2  
2015 – 2  
2014 – 11  
2013 – 19  
2012 – 8  
2011 – 16  
Total = 58

**Effluent violations (daily max.)**

Settleable solids – 1 violation

**Effluent violations (7 day and 30 day avg.)**

Although TSS may have violations for loading and concentration for both a 7 day and 30 day average, only one violation (assumed to be a 30 day average) was used in the penalty calculation.

TSS (assume 30 day average) - 4 violations

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

I. With respect to the aforesaid alleged violations, a civil penalty in the amount of EIGHT THOUSAND SEVEN HUNDRED FIFTY (\$8,750) of which ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750) 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.

The balance SEVEN THOUSAND DOLLARS (\$7,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance. Payment of the above penalties shall not in any way alter Respondent’s obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. 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, servants, agents, successors or assigns.

V. 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.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without prior notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All 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

IX. This Order is deemed effective on the date signed by the Department.

X. 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;

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, its agents, its servants, its employees, its successors and its assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. 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. 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 plans and reports 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 thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal. If Respondent submits a required document prior to the compliance milestone deadline, it shall not be in violation should the Department's review extend beyond the milestone compliance deadline.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondents 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. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

XIII. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

XIV. This Order shall not create any presumption of law or fact which shall inure to the benefit of any person other than the Department, State or Respondent.

DATED: *March 13* 2016  
Rotterdam, New York

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:



Keith Goertz  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Respondent 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.

Montgomery County Sanitary District No. 1

Authorized Representative \_\_\_\_\_

SIGNED:  \_\_\_\_\_

TITLE: County Executive \_\_\_\_\_

DATE: March 1, 2017 \_\_\_\_\_

STATE OF NEW YORK

)ss.:

COUNTY OF \_\_\_\_\_ )

On the 1<sup>st</sup> day of March in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared Matthew Cosenfort personally known 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public  
Qualified in the County of: Montgomery  
My Commission Expires:

MEGHAN MARIE MANION  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02MA6236240  
Qualified in Montgomery County  
My Commission Expires 2-28-19

## Schedule of Compliance

1. By December 31, 2018, Respondent shall “*enact, maintain and enforce or cause to be enacted, maintained and enforced up-to-date and effective sewer use law in all parts of the POTW service area. Such enactment and enforcement shall include intermunicipal agreements and/or other enforceable legal instruments that allow the permittee to control discharges, either directly or through jurisdictions contributing flow to the POTW.*” (6 NYCRR Part 750-2.9(a)(4)). This shall include the Respondent enforcing their right to reduce municipal infiltration and inflow (I/I) provided in Section 707 of the sewer use law or to compel this work to be completed through an intermunicipal agreement or other legal instrument referencing the law
2. By December 31, 2019, Respondent shall have obtained legal agreements, allowing access, easements or title to the real estate parcel containing the Nelliston Pump Station, where individuals own land where public utilities owned by the District are sited.
3. Compliance with this Order on Consent and Schedule of Compliance shall not be a defense to noncompliance by Respondent with its SPDES permit, including all effluent limits.
4. Certificate of Compliance forms, signed by the Sewer District Chairman, shall be submitted upon the completion of Items 1 and 2. The forms are attached.