

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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CERTIFIED - RETURN RECEIPT REQUESTED
7015 0640 0005 8292 9839

July 11, 2016

Robert E. Hess
Town Attorney
Town of Niskayuna
One Niskayuna Circle
Niskayuna, NY 12309

Re: Order on Consent
R4-2010-1012-115M

Dear Mr. Hess:

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

This will also acknowledge receipt of \$15,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Richard Ostrov
Regional Attorney
Region 4

Enclosure

ec: J. Malcolm
D. Thorsland

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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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 (6 NYCRR)

MODIFICATION OF
ORDER ON CONSENT
("MODIFICATION")

DEC Case
R4-2010-1012-115M

- By -

TOWN OF NISKAYUNA

Respondent.

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WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation ("Department") is and has been a Department of the State of New York charged with administration of the State Pollutant Discharge Elimination System ("SPDES"), pursuant to Article 17, Title 8 of the Environmental Conservation Law ("ECL") Parts 750-757, Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").

2. Respondent is subject to Order on Consent, R4-2010-1012-115 (effective date 12/22/2010) ("Order"). The Order contains a Schedule of Compliance. Previous to the Order, Respondent was also subject to Order on Consent R4-2003-0502-49 ("2003 Order"). The 2003 Order and Order were to address excess flows to Respondent's wastewater treatment plant ("WWTP") due to excess inflow and infiltration ("I&I"). The WWTP operates pursuant to SPDES permit (#NY0023973).

Facts and Violation

3. Paragraph 1 of the Order's Schedule of Compliance required that Respondent complete all necessary I&I work as required in an approved plan by no later than January 3, 2016.

4. Respondent will not be able to complete all approved I&I work by January 3, 2016 and will have to entertain other options for reducing flows to its WWTP.

5. Respondent's failure to complete all approved I&I work by January 3, 2016 is a violation of the Order.

Waiver of Hearing

6. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Modification and has agreed to be bound by the provisions, terms and conditions of this Modification.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. Civil Penalties

Respondent is hereby assessed a civil penalty for THIRTY THOUSAND DOLLARS (\$30,000) for the violations stated herein. FIFTEEN THOUSAND DOLLARS (\$15,000) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance. Payment of FIFTEEN THOUSAND DOLLARS (\$15,000) of the civil penalty is due with the return of the signed and notarized Modification. 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.

II. Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance and any reports submitted and approved under this Modification, and the Schedule of Compliance and all approved reports are incorporated and made part of this Modification. The Modification's Schedule of Compliance supersedes the Order's Schedule of Compliance.

III. Summary Abatement

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

IV. Binding Effect

This Modification is binding upon the Respondent, its agents, its employees, its successors, assigns and to all persons and firms, and corporations acting subordinate thereto. The Order is terminated as of the effective date of this Modification.

V. Communications

All 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:

Supervisor
Town of Niskayuna
One Niskayuna Circle
Niskayuna, New York 12309-4381

VI. Modifications

No change or modification to this Modification shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director.

VII. Access

For the purposes of insuring compliance with this Modification, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

VIII. 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 Respondents, its directors, officers, employees, servants, agents, successors or assigns.

IX. Reservations

Except as specifically provided in this Modification, nothing contained in this Modification 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 there under or permits issued there under based upon other than existing contamination.

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

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's officials, 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 Modification and whether or not this Modification has been entered into voluntarily by Respondent.

X. Submittals

(A) Whenever the Department's approval of a submittal under the terms of this Modification 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 Modification 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 Modification.

(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 Modification. 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.

XI. Effective Date

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

XII. Termination Date

The Modification shall terminate upon Respondent's compliance with all terms, conditions and provisions and any plans submitted to the Department and approved pursuant to the Schedule of Compliance. The Department will determine if the Respondent satisfies the requirements of this termination provision.

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DATED: July // , 2016
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

Town of Niskayuna
Schedule of Compliance

1.
 - a. The Respondent shall verify the condition of the larger sized trunk sewers (15 to 21-inches in diameter as depicted on the plan *Sewer District & Sanitary Pump Station, Tributary Area, March 12, 2015*) within Sewer District 6 through a condition assessment process focused on achieving and/or maintaining compliance with its SPDES permit including 6NYCRR Part 750-2. The assessment process described above shall use methods supported by the National Association of Sewer Service Companies (NASSCO) or other sound engineering methods approved by the Department. The assessment process shall include, as an initial measure, a flow meter investigation to determine whether infiltration/inflow (I/I) is causing the domestic base flow and infiltration (average dry weather flow) to exceed 120 gallons per capita per day (gpcpd) or domestic base flow and infiltration and inflow (average wet weather flow) to exceed 275 gpcpd. If flows exceed these values or if the flow meter investigation is inconclusive, additional investigation measures, such as those supported by NASSCO, shall be implemented.
 - b. Within 90 days of the effective date of this order, the Respondent shall submit a work plan setting forth the flow meter investigation and evaluation process to the Department for review and approval.
 - c. All flow meter investigation work shall be completed by June 30, 2018. Any additional investigation work required based upon the flow meter investigation results shall be completed by December 31, 2021. Annual reports documenting the activities and observations conducted during the year shall be submitted to the Department by January 30 of the following year. A final summary report documenting all activities and observations conducted during each calendar year shall be submitted to the Department by March 31, 2022 including recommendations for further assessment and remedial work, if necessary to achieve compliance with the Respondent's SPDES permit, as determined by a NYS Licensed Professional Engineer.
2. By September 15, 2016, Respondent shall submit to the Department for review and approval, engineering design plans and project schedule relating to the

WWTP upgrades as described in the Facility Plan (Barton & Loguidice, July 2015). The upgrades shall include equalization at the head works of the WWTP (minimum capacity of 300,000 gallons), installing baffles in the primary clarifiers, replacing the two existing rectangular secondary clarifiers with a peripheral feed clarifier(s) (minimum 4,072 square feet surface settling area), and replacing the gaseous chlorine disinfection system with ultraviolet light equipment (designed for peak hourly flow of 7.8 MGD). The project schedule shall be prepared with substantial completion being achieved by June 30, 2018.

3. By December 15, 2016, Respondent shall revise the Bypass Plan (Barton & Loguidice, October 2015) to incorporate any final work tasks/project schedule items as provided by the selected general contractor and/or their subcontractors. As noted in Part II of the Town's SPDES permit (6 NYCRR 750-2.8 (b)), construction work requiring a bypass can proceed in accordance with the Department approved plan.
4. Respondent shall continue to be subject to the terms of the Sewer Moratorium until the above WWTP upgrades have been certified as substantially complete by the Town or their designee and approved by the Department. The existing Exemption List (Town correspondence to Department dated March 22, 2011) will also remain in effect but no other projects will be added as part of this Modification.
5. Compliance with the terms and conditions of the Schedule of Compliance shall not be a defense to subsequent violations of the SPDES permit.