

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

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Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 4013

February 25, 2014

Harry C. Buffardi, Supervisor
Town of Rotterdam
John F. Kirvin Government Center
1100 Sunrise Boulevard
Rotterdam, NY 12306

Re: Order of Consent
R4-2014-0117-7

Dear Supervisor Buffardi:

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

This will also acknowledge receipt of \$2,200 the civil penalty pursuant to Paragraph
I.

Sincerely,

Richard Ostrov
Regional Attorney
Region 4

Enclosure

cc: J. Malcolm

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)

ORDER
ON
CONSENT

DEC Case

R4-2014-0117-7

TOWN OF ROTTERDAM,

Respondent.

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WHEREAS:

1. Pursuant to Environmental Conservation Law ("ECL") Article 17, the Department of Environmental Conservation ("Department" or "DEC") is the State agency which has jurisdiction over the environmental law and policy of the State pursuant to, *inter alia*, §3-0301 of the Environmental Conservation Law (ECL). In particular, DEC regulates the discharge from point sources, as that term is defined at 6 NYCRR §750.2(a) (20), pursuant to ECL §17-0101 *et seq.* and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), Part 750 *et seq.*
2. Respondent, Town of Rotterdam, is a municipality, which owns and operates a waste water treatment plant ("WWTP"), known as Rotterdam Sewer District No. 2, that discharges into the Mohawk River, a Class A water, pursuant SPDES permit number NY 012-0141 ("SPDES permit"). The collection system includes an above ground main that carries about 95% of the systems sewage composed of clay and approximately 60 years old ("main"). A portion of the main runs along a tributary to the Poentic Kill Creek, a Class B stream that flows into the Mohawk River.
3. Respondent is a person as defined at ECL § 17-0105(1).
4. On November 5, 2013 a portion of Respondent's main was struck from a falling tree resulting in a release of an undetermined amount of untreated sewage to a tributary to the Poentic Kill Creek, a Class B stream.
5. On January 8, 2014, a portion of Respondent's main (upstream from the November 5,

2013 incident) broke and discharged approximately 300,000 gallons of untreated sewage to a tributary of the Poentic Kill Creek, a Class C stream.

6. Respondent timely provided the Department with notice of both the November 5, 2013 and the January 8, 2014 main breaks and promptly acted to repair the breaks.

7. Regulations at 6 NYCRR 750-2.8(a)(2) provide that: “The permittee shall, at all times, properly operate and maintain all disposal facilities, which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes as a minimum, the following:

(i) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. A facility or system is critical if it contains process equipment that is essential for proper operation and necessary to achieve compliance with the applicable SPDES permit effluent limits;

(ii) Written procedures for operation and maintenance , training new operators, adequate laboratory controls and appropriate quality assurance. This provision requires the operation of installed backup or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.”

8. ECL Section 17-0803 provides that: Except as provided by subdivision five of section 17-0701 of this article, it shall be unlawful to discharge pollutants to the waters of the state from any outlet or point source without a SPDES permit issued pursuant hereto or in a manner other than as prescribed by such permit.”

9. Respondent has violated 6 NYCRR 750-2.8(a)(2) by failing to maintain the above ground sewer main that was involved in the November 5, 2013 and the January 8, 2014 breaks.

10. Respondent violated ECL Section 17-0803 when the sewer main discharged untreated sewage on November 5, 2013 and the January 8, 2014.

11. ECL 7 1-1929(1) provides that: “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 to 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.”

12. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order on Consent 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. Penalty

Respondent is hereby assessed a civil penalty in the amount of ELEVEN THOUSAND DOLLARS (\$11,000) for the violations stated herein. TWO THOUSAND TWO HUNDRED DOLLARS (\$2,200) of the civil penalty is due with the return of the signed and notarized Order to the Department. EIGHT THOUSAND EIGHT HUNDRED DOLLARS (\$8,800) 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".

II. Schedule of Compliance

The Schedule of Compliance requirements and any plans approved there under are enforceable under this Order.

III. Communications

All communications required herein shall be made to: Department -- DEC Region 4 , 1150 North Westcott Road, Schenectady, NY 12306, and Attn: Regional Water Engineer.

IV. Access

Respondent shall allow duly authorized representatives of DEC access to the WWTP 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 or the ECL.

V. Summary Abatement

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.

VI. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, 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. Review of Submittals

A. 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 accepts 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.

VIII. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

IX. Modification

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.

X. Entire Order

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 Paragraph IX of this 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 obligations to obtain such formal approvals as may be required by this Order.

XI. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

XII. Reservation of Rights

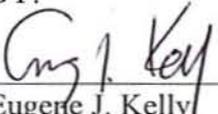
Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

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 there under.

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.

DATED: 2/25, 2014
Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation
BY:



Eugene J. Kelly
Regional Director
Region 4

Schedule of Compliance

1) By no later than February 28, 2014, Respondent shall within two hours of having notice of a sewer main break, install and commence utilizing temporary piping to bypass the sewage around the break eliminating any further discharge from the main. All temporary piping locations shall be inspected on a daily basis until the break has been permanently fixed.

2) By no later than March 30, 2014, Respondent shall submit to the Department for approval, a Sewer Collection System Preventive Maintenance Plan prepared by a Professional Engineer licensed to practice in New York State (“plan”). The plan shall include an update on the current status of the collection system, a plan for periodic inspections of the collection system, and a plan/schedule for investigation and remediation. Once approved by Department, the plan and schedule will become enforceable under the terms of this Order. Respondent shall comply with the plan’s requirements on or before December 31, 2015.

3) Compliance with the Schedule of Compliance shall not be a defense to subsequent violations of the ECL and regulations promulgated there under.