

**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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www.dec.ny.gov

**CERTIFIED - RETURN RECEIPT REQUESTED**  
7016 0340 0000 4616 5720

September 15, 2017

Jack Conway  
Town Supervisor  
Town of East Greenbush  
225 Columbia Turnpike  
Rensselaer, NY 12144

Re: Order on Consent  
R4-2017-0420-192

Dear Mr. Conway:

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

This will also acknowledge receipt of \$10,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: B. Starr  
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. R4-2017-0420-192

Town of East Greenbush  
225 Columbia Turnpike  
Rensselaer, N.Y. 12144

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, Town of East Greenbush, owns and operates a wastewater treatment plant ("WWTP") located on Columbia Turnpike, East Greenbush, New York, that operates pursuant to a State Pollution Discharge Elimination System ("SPDES") permit NY0026034.

### First Violation

4. Respondent reported effluent limit violations in its monthly discharge monitoring reports (“DMRs”) for Outfall No. 001. The following table represents exceedances dating back to November 2015. In addition, Respondent had several violations for not sampling and not reporting parameters required by the SPDES permit. These included Total Mercury for June 2016, September 2016, December 2016, and March 2017 as well as Whole Effluent Toxicity (“WET”) Testing for June 2016.

<b>Outfall</b>	<b>Parameter</b>	<b>Limit Type</b>	<b>Limit Units</b>	<b>Limit Value</b>	<b>DMR Value</b>	<b>Mon. Period</b>
001A	BOD, 5-day, 20 deg. C	7 DA AVG	lb/d	2500.	2702.	11/30/2015
001A	BOD, 5-day, 20 deg. C	7 DA AVG	mg/L	120.	180.	11/30/2015
001A	Solids, total suspended	7 DA AVG	mg/L	60.	81.5	11/30/2015
001A	Solids, settleable	DAILY MX	mL/L	.3	1.	01/31/2016
001A	Solids, settleable	DAILY MX	mL/L	.3	1.	02/29/2016
001A	Nitrogen, Kjeldahl, total [as N]	DAILY MX	mg/L	20.	21.4	04/30/2016
001A	Coliform, fecal general	30DA GEO	#/100L	200.	567.	05/31/2016
001A	Coliform, fecal general	7 DA GEO	#/100L	400.	1200.	05/31/2016
001A	Nitrogen, Kjeldahl, total [as N]	DAILY MX	mg/L	20.	20.7	05/31/2016
001A	Chlorine, total residual	DAILY MX	mg/L	.7	4.	06/30/2016
001A	Coliform, fecal general	30DA GEO	#/100L	200.	327.5	06/30/2016
001A	Coliform, fecal general	7 DA GEO	#/100L	400.	>6000	06/30/2016
001A	Nitrogen, Kjeldahl, total [as N]	DAILY MX	mg/L	20.	25.6	06/30/2016
001A	Coliform, fecal general	7 DA GEO	#/100L	400.	>8000	07/31/2016
001A	Nitrogen, Kjeldahl, total [as N]	DAILY MX	mg/L	20.	31.3	07/31/2016
001A	Solids, total suspended	7 DA AVG	mg/L	45.	49.1	07/31/2016
001A	Chlorine, total residual	DAILY MX	mg/L	.7	6.	08/31/2016
001A	Coliform, fecal general	30DA GEO	#/100L	200.	>451	08/31/2016
001A	Coliform, fecal general	7 DA GEO	#/100L	400.	>1800	08/31/2016
001A	Chlorine, total residual	DAILY MX	mg/L	.7	6.	09/30/2016
001A	Coliform, fecal general	30DA GEO	#/100L	200.	1209.	09/30/2016
001A	Coliform, fecal general	7 DA GEO	#/100L	400.	>6000	09/30/2016
001A	Chlorine, total residual	DAILY MX	mg/L	.7	5.	10/31/2016
001A	Coliform, fecal general	30DA GEO	#/100L	200.	2050.	10/31/2016
001A	Coliform, fecal general	7 DA GEO	#/100L	400.	>6000	10/31/2016
001A	Coliform, fecal general	7 DA GEO	#/100L	400.	1200	05/31/2017

5. Respondent's SPDES permit sets effluent monitoring requirements. ECL §17-0511 provides that "*The use of existing or new outlet 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.*" Respondent violated the terms of its SPDES permit and violated ECL § 17-0511 by having discharges that exceeded the SPDES permit effluent limitations and for not sampling and not reporting all parameters required by the SPDES permit.

#### Second Violation

6. Respondent's SPDES permit requires the submission of an Annual Status Report on the Mercury Minimization Program ("MMP"), by May 1, 2017.

7. Respondent violated the terms of its SPDES permit by failing to submit the MMP Annual Status Report by May 1, 2017.

#### Third Violation

8. On January 15, 2017 and August 26, 2017, Respondent had sanitary sewer overflow ("SSO") events at the 3<sup>rd</sup> Avenue Sewage Pumping Station resulting in an unpermitted sewage discharge.

9. ECL § 17-0505 provides that "*The making or use of an outlet or point source discharging into the waters of the state, and the operation or construction of disposal systems, without a valid SPDES permit as provided by ECL §17-0701 or Title 8 hereof, are prohibited.*" Respondent violated the terms of its SPDES permit and violated ECL § 17-0505 by having unpermitted sewage discharges on January 15, 2017 and August 26, 2017.

10. 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.*"

11. 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, having considered this matter and being duly advised, **IT IS HEREBY**

**ORDERED THAT:**

I. With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of FIFTY THOUSAND DOLLARS (\$50,000) of which TEN THOUSAND DOLLARS (\$10,000) 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.

The balance FORTY THOUSAND DOLLARS (\$40,000) 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.

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.

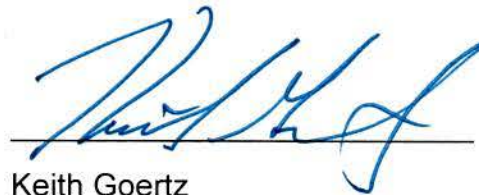
XIII. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

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: *September 14* 2017  
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.

Town of East Greenbush

Authorized Representative John J. Conway

SIGNED: John J. Conway

TITLE: Town Supervisor

DATE: September 14, 2017

STATE OF NEW YORK

)ss.:

COUNTY OF Rensselaer )

On the 14 day of September in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared John J. Conway 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.

Antonette L. Murphy

Notary Public

Qualified in the County of:

My Commission Expires: March 4, 2018

ANTONETTE L. MURPHY  
Notary Public, State of New York  
No. 01MU5056576  
Qualified in Rensselaer County  
My Commission Expires March 4, 2018

## Schedule of Compliance

1. Respondent shall, within 60 days of the effective date of this Order, develop and submit to the Department, a written sampling plan for all the SPDES permit limits, levels, and monitoring requirements. The plan shall establish the schedule and locations for all sampling and monitoring activities. The plan shall describe personnel responsible for sample collections and record keeping, sampling equipment and maintenance, procedures for handling samples, and develop a record log of non-compliance samples and corrective measures.
2. Within 90 days of the effective date of the Order on Consent, Respondent shall develop and submit to the Department, a WWTP Process Control Plan developed by a professional engineer licensed in and by the State of New York. The plan shall be developed in consultation with the WWTP operators and shall establish the visual observations, process control testing, trouble-shooting techniques, and corresponding process adjustments necessary for all unit processes to optimize the WWTP's performance. The plan shall discuss industrial discharger impacts as well as wet-weather and seasonal operations and establish recommended frequencies and locations for all visual observations and process control testing.