

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
7016 0340 0000 4616 7809

November 17, 2016

Terresa Bakner
Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, NY 12260

Re: Order on Consent
R4-2016-0822-143
Town of Duanesburg

Dear Ms. Bakner:

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

This will also acknowledge receipt of \$5,000 the civil penalty pursuant to Paragraph I.

Sincerely,

Dusty Renee Tinsley 

Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

cc: 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)

**ORDER ON
CONSENT**

DEC Case
R4-2016-0822-143

By

Town of Duanesburg,

Respondent.

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WHEREAS:

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.
2. Respondent, Town of Duanesburg, owns and operates the Publically Owned Treatment Works, located on Cole Road, Duanesburg, New York 12056 (Schenectady County)(“POTW”).
3. The POTW operates pursuant to a State Pollution Discharge Elimination System (“SPDES”) permit NY-0261271 (hereinafter “SPDES Permit”).
4. ECL §17-0511 prohibits the use of point sources unless in compliance with all standards, criteria and limitations.
5. 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.”
6. The SPDES Permit sets the following effluent discharge limits for Outfall No. 001:
 - a. BOD: Limits of 5 mg/L & 4.17 lb./day (Daily Maximum)

- b. Coliform, Fecal General: Limits of 200 counts/100 mL (30 day geometric mean) & 400 counts/100 mL (7 day g.m.)
- c. Nitrogen, Ammonia, Total: Daily Maximum Limits of 1.5 mg/L & 1.25 lb./day (June through October) & 2.2 mg/L & 1.84 lb./day (November through May)
- d. Phosphorus, Total as P: Limits of 0.5 mg/L & 0.417 lb./day (30 day arithmetic mean)
- e. Solids, Total Suspended: Limits of 10 mg/L & 8.34 lb./day (Daily Maximum)

7. The SPDES Permit requires Respondent to submit on a monthly basis to the Department discharge monitoring reports (“DMRs”).

8. Respondent submitted DMRs that identified the following SPDES Permit effluent violations:

BOD	
Limits of 5 mg/L & 4.17 lb./day (Daily Maximum)	
February 2015	18 mg/L
February 2015	7.62 lb./day
March 2015	16 mg/L
March 2015	8.87 lb./day
September 2015	8 mg/L
November 2015	6 mg/L
December 2015	6 mg/L
February 2016	6 mg/L
March 2016	15 mg/L
March 2016	6.1 lb./day
June 2016	18 mg/L
June 2016	7.5 lb./day
July 2016	15 mg/L
July 2016	5.60 lb./day
August 2016	9 mg/L
Coliform, Fecal General:	
Limit: 200 counts/100 mL (30 day geometric mean) & 400 counts/100 mL (7 day g.m.)	
February 2013	238 counts/100 mL (30 day geometric mean)
January 2014	816 counts/100 mL (30 & 7 day geometric mean)
March 2014	235 counts/100 mL (30 day geometric mean)
April 2014	308 counts/100 mL (30 day geometric mean)
December 2014	276 counts/100 mL (30 day geometric mean)
February 2015	72,420 counts/100 mL (30 & 7 day geometric mean)
April 2015	727 counts/100 mL (30 & 7 day geometric mean)
February 2016	225 counts/100 mL (30 day geometric mean)

March 2016	Greater than 2,420 counts/100 mL (30 & 7 day geometric mean)
May 2016	236 counts/100 mL (30 day geometric mean)
July 2016	Greater than 2,420 counts/100 mL (30 & 7 day geometric mean)
Nitrogen, Ammonia, Total: Daily Maximum Limits of 1.5 mg/L & 1.25 lb./day (June through October) & Limits of 2.2 mg/L & 1.84 lb./day (November through May)	
August 2013	4.1 mg/L
August 2013	2.69 lb./day
November 2013	5.8 mg/L
November 2013	2.44 lb./day
March 2014	3.9 mg/L
August 2014	2.1 mg/L
December 2014	6.9 mg/L
December 2014	3.45 lb./day
January 2015	6.4 mg/L
January 2015	2.81 lb./day
February 2015	75.2 mg/L
February 2015	31.82 lb./day
March 2015	16.4 mg/L
March 2015	9.1 lb./day
February 2016	7.0 mg/L
February 2016	2.9 lb./day
March 2016	24 mg/L
March 2016	9.8 lb./day
May 2016	18.8 mg/L
May 2016	7.6 lb./day
June 2016	13.9 mg/L
June 2016	5.8 lb./day
July 2016	12.4 mg/L
July 2016	4.63 lb./day
Phosphorus, Total as P Limits of 0.5 mg/L & 0.417 lb./day (30 day arithmetic mean)	
March 2014	1.52 mg/L
March 2014	0.57 lb./day
April 2014	1.22 mg/L
April 2014	.79 lb./day
July 2014	0.55 mg/L
June 2015	0.8 mg/L
June 2015	0.56 lb./day
August 2015	0.74 mg/L
November 2015	1.8 mg/L
November 2015	0.524 lb./day
December 2015	1.8 mg/L
December 2015	0.48 lb./day
January 2016	0.66 mg/L

February 2016	1.0 mg/L
March 2016	1.65 mg/L
March 2016	0.672 lb./day
April 2016	0.58 mg/L
May 2016	0.89 mg/L
Solids, Total Suspended Limits of 10 mg/L & 8.34 lb./day (Daily Maximum)	
July 2013	17 mg/L
July 2014	15 mg/L
February 2015	22 mg/L
February 2015	9.31 lb./day
March 2015	12 mg/L
March 2016	13 mg/L

9. Respondent's SPDES Permit effluent exceedances are violations of ECL §17-0511, 6 NYCRR Part 750-2.1(e), and the SPDES Permit.

CIVIL PENALTY

10. ECL §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."

WAIVER OF HEARING

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

I. With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of TWENTY THOUSAND DOLLARS (\$20,000) of which FIVE THOUSAND DOLLARS (\$5,000) 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. FIFTEEN THOUSAND DOLLARS (\$15,000) 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. This Order on Consent shall supersede all prior orders and modifications.

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

IV. This Order is binding upon the Respondent and shall inure to its benefit and that of its successors and assigns. Respondent is responsible for ensuring that its agents, its employees, its successors, assigns and to all persons and firms, and corporations acting subordinate thereto comply with terms and conditions thereof.

V. All communications except where otherwise specifically directed should be sent as follows:

To the Department at:

Regional Water Engineer
New York State
Department of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

Please include the name and address of the facility as well as the permit number for the facility.

To the Respondent at:

Town of Duanesburg
5853 Western Turnpike
Duanesburg, New York 12056

VI. The terms and conditions of the Schedule of Compliance may be delayed or modified if the Respondent cannot comply with the terms of this Order because of an act of God, war, strike or other condition as to which conduct on the part of the Respondent or its consultant, contractor or agent was not the proximate cause; provided, however, that the Respondent notifies the Department in writing within 5 days of obtaining knowledge of any such condition and requests an appropriate extension or modification of the Schedule of Compliance.

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

VIII. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question without prior notice in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance with this Order, and the ECL and regulations promulgated thereunder.

IX. 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.

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 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 Documents

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 sixty (60) 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 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. The effective date of this Order shall be the date the Order is signed by the Department.

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

DATED: November 16, 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 Town of Duaneburg 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.

BY: [Signature]

TITLE: Town Supervisor Town of Duaneburg

DATE: 11/10/16

STATE OF NEW YORK)
COUNTY OF Schenectady) ss.:

On this 10th day of November, 2016, before me personally came Roger Tidball, to me known, who being by me duly sworn did depose and say that he resides in Duaneburg, NY, that he is the Town Supervisor of the municipality described in and which executed the foregoing instrument, and that he signed his name as authorized by said municipality.

[Signature]
Notary Public, State of New York

TERRESA M. BAKNER
Notary Public, State of New York
Qualified in Schenectady County
No. 028A4956921
Commission Expires October 2, 2017

SCHEDULE OF COMPLIANCE

Respondent shall:	Due Date
<p data-bbox="224 363 1052 468">Submit an Engineering Report prepared by a Professional Engineer licensed to practice in New York State ("Report"). The Report shall:</p> <ul style="list-style-type: none"><li data-bbox="224 527 1068 667">a. include the results of an evaluation of the Delanson Wastewater Treatment Plan ("WWTP"), including consideration of the additional flow from Duanesburg Sewer District #3,<li data-bbox="224 726 1045 867">b. identify both short-term and long-term improvements to achieve and maintain the level of performance required by the SPDES Permit and the governing regulations at 6 NYCRR Part 750-2,<li data-bbox="224 926 1003 1031">c. include a schedule for the implementation of all improvements, with the short-term improvements being implemented by no later than March 31, 2017, and<li data-bbox="224 1089 846 1119">d. include proposed interim discharge limits. <p data-bbox="224 1173 1078 1314">The short-term improvements set forth in the Report shall be consistent with the WWTP improvements outlined in the Engineering Report for the Duanesburg Sewer District #3, dated February 5, 2016.</p> <p data-bbox="224 1369 1084 1587">The long-term improvements set forth in the Report shall address any remaining performance limiting factors identified for all major unit processes at the WWTP and include a continuous infiltration and inflow (I&I) control program consistent with the requirements of 6 NYCRR Part 750-2.9(a)(3).</p> <p data-bbox="224 1642 1097 1782">All system design and operation must comply with the standards accepted by Department staff. Once approved, the schedule contained in the Report will become enforceable under the terms of this Order.</p>	<p data-bbox="1133 363 1386 392">January 20, 2017</p>