

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 5249

December 30, 2016

Phil H. Dixon
Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, NY 12260

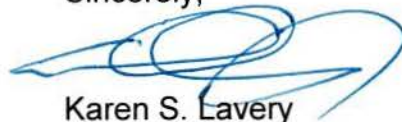
Re: Order on Consent
R4-2016-0916-143
Village of Coxsackie

Dear Mr. Dixon:

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

This will also acknowledge receipt of \$5,063 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: R. Mitchell
D. Thorsland

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Article 17 and
Title 6 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York (6 NYCRR)

- by -

ORDER ON CONSENT
File No. R4-2016-0916-143

Village of Coxsackie
119 Mansion Street
Coxsackie, NY 12051

Respondent

WHEREAS:

1. The Department of Environmental Conservation ("Department") 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. In particular, DEC is and has been responsible for the protection of the water resources of the State, pursuant to ECL Article 17 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 (6 NYCRR), Part 750, *et seq.*
2. Respondent, Village of Coxsackie, is a municipality of the State of New York which operates a wastewater treatment system at the water treatment plant located on Titus Mill Road in Climax, New York ("site") and which discharges effluent to the waters of the state, pursuant to SPDES permit No. NY-0268267.
3. Respondent is a person as defined in ECL § 17-0105(1).
4. Respondent's permit authorizes the discharge of treated wastewater to the Climax Creek, a Class C waterbody.
5. ECL §17-0511 provides that "*The use of existing or new outlets 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.*"

6. Regulations at 6 NYCRR 750-1.4(a) “*Except as provided in section 750-1.5(a) of this Subpart, no person shall discharge or cause a discharge of any pollutant without a SPDES permit having been issued to such person pursuant to this Part and ECL article 17, title 7 or 8, with respect to such discharge; and no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit.*”

7. Respondent has violated ECL §17-0511 and regulations at 6 NYCRR 750-1.4(a), and its permit by the following:

Violation Summary:

SUMMARY OF VIOLATIONS

The following unresolved effluent limit violations appear in US EPA’s ICIS compliance tracking system:

Parameter	Date	Limit type	Limit	Reported Value
Aluminum, total [as Al]	12/31/2014	Monthly ave.	2.0 mg/L	2.87 mg/L
Aluminum, total [as Al]	01/31/2015	Monthly ave.	2.0 mg/L	2.51 mg/L
Aluminum, total [as Al]	02/28/2015	Monthly ave.	2.0 mg/L	3.04 mg/L
Aluminum, total [as Al]	03/31/2015	Monthly ave.	2.0 mg/L	3.18 mg/L
Aluminum, total [as Al]	04/30/2015	Monthly ave.	2.0 mg/L	3.71 mg/L
Aluminum, total [as Al]	05/31/2015	Monthly ave.	2.0 mg/L	3.71 mg/L
Aluminum, total [as Al]	06/30/2015	Monthly ave.	2.0 mg/L	2.14 mg/L
Aluminum, total [as Al]	07/31/2015	Monthly ave.	2.0 mg/L	3.38 mg/L
Aluminum, total [as Al]	10/31/2015	Monthly ave.	2.0 mg/L	3.35 mg/L
Aluminum, total [as Al]	11/30/2015	Monthly ave.	2.0 mg/L	3.41 mg/L
Aluminum, total [as Al]	12/31/2015	Monthly ave.	2.0 mg/L	9. mg/L
Aluminum, total [as Al]	01/31/2016	Monthly ave.	2.0 mg/L	2.9 mg/L
Aluminum, total [as Al]	02/29/2016	Monthly ave.	2.0 mg/L	2.6 mg/L
Aluminum, total [as Al]	03/31/2016	Monthly ave.	2.0 mg/L	3.3 mg/L
Aluminum, total [as Al]	04/30/2016	Monthly ave.	2.0 mg/L	3.6 mg/L
Aluminum, total [as Al]	05/31/2016	Monthly ave.	2.0 mg/L	3.4 mg/L
Aluminum, total [as Al]	06/30/2016	Monthly ave.	2.0 mg/L	2.14 mg/L
Aluminum, total [as Al]	10/31/2016	Monthly ave.	2.0 mg/L	2.4 mg/L
Aluminum, total [as Al]	02/28/2015	Daily max.	4.0 mg/L	4.09 mg/L
Aluminum, total [as Al]	04/30/2015	Daily max.	4.0 mg/L	4.4 mg/L
Aluminum, total [as Al]	05/31/2015	Daily max.	4.0 mg/L	4.4 mg/L

Aluminum, total [as Al]	12/31/2015 Daily max.	4.0 mg/L	18. mg/L
Aluminum, total [as Al]	04/30/2016 Daily max.	4.0 mg/L	4.3 mg/L
Aluminum, total [as Al]	05/31/2016 Daily max.	4.0 mg/L	5.6 mg/L
Chlorine, total residual*	04/30/2015 Daily max.	0.1 mg/L	0.11 mg/L
Chlorine, total residual*	04/30/2016 Daily max.	0.1 mg/L	0.27 mg/L
Chlorine, total residual*	10/31/2016 Daily max.	0.1 mg/L	0.19 mg/L
pH	03/31/2015 Minimum	6.5 SU	6.43 SU
pH	04/30/2015 Minimum	6.5 SU	6.2 SU
Solids, total suspended	11/30/2015 Monthly ave.	20 mg/L	21. mg/L

**Chlorine is not expected to be present in the effluent. These measurements are believed to be erroneous results caused by a test method that did not adjust for the presence of permanganate. The operator is correcting the test method.*

8. 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.”

9. 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:**

PENALTY

I. With respect to the aforesaid alleged violation, a civil penalty in the amount of TWENTY FIVE THOUSAND THREE HUNDRED THIRTEEN DOLLARS (\$25,313) is hereby assessed against the Respondent of which FIVE THOUSAND SIXTY THREE DOLLARS (\$5,063) 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 TWENTY THOUSAND TWO HUNDRED FIFTY DOLLARS (\$20,250) 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 Department will send Respondent a notice of non-compliance. Respondent will have ten (10) business days to respond to the notice and demand a meeting. After providing said due process (including a meeting, if requested), the Department will issue a written decision stating whether the suspended portion of the penalty is due and payable without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

SCHEDULE OF COMPLIANCE

II. Respondent shall commence implementation of the activities described in the Attached Schedule of Compliance, which is an enforceable part of this Order, in accordance with its terms. Respondent shall meet the schedule therein.

REPORTS

III. All reports required herein shall be made to the Region 4 office of DEC, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Water Engineer.

ACCESS

IV. Respondent shall allow duly authorized agents and employees of DEC access to any facility, site, or records owned, operated, controlled, or maintained by Respondent, without prior notice, at such times as may be desirable or necessary, and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

INDEMNIFICATION

V. 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 this Order by Respondent, his or her employees, servants, agents, successors or assigns.

SUCCESSORS AND ASSIGNS

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

EFFECTIVE DATE

VII. The effective date of this Order shall be the date that the Commissioner or his Designee signs it. The Department will provide Respondent (or the Respondent's Counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or his designee signs it.

DEFAULT

VIII. The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.

MODIFICATION

IX. This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

OTHER RIGHTS

X. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

DATED: *December 30* 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.

Village of Coxsackie

Authorized Representative Mark R. Evans

SIGNED: Mark R. Evans

TITLE: Mayor

DATE: 12/20/16

STATE OF NEW YORK

COUNTY OF Greene)ss.:

On the 20th day of December in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Mark Evans 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.

Nikki M. Berezna

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

NIKKI M. BEREZNAK
Notary Public, State of New York
Commission No. 01BE6281552
Qualified in Greene County
Commission Expires: 5/3/17

Schedule of Compliance

1. By January 31, 2017, Respondent shall submit an engineering report prepared by a professional engineer licensed in the State of New York. The report shall include:
 - a. a summary of corrective measures taken from February 2013 to the present and an explanation of why these measures have failed to result in long-term compliance with the permit limits,
 - b. recommendations to bring the facility into compliance with its permit, and
 - c. a plan and schedule for implementing the recommendations, with all recommendations implemented by no later than December 31, 2017. Upon approval the schedule shall become an enforceable part of the Order.
2. The following interim effluent limitations shall apply for Outfall 001 beginning on the effective date of this Order and continue until December 31, 2017.

PARAMETER	EFFLUENT LIMIT		UNITS	SAMPLE FREQUENCY	SAMPLE TYPE
	Monthly Average	Daily Maximum			
Aluminum, total (as Al)	3.7	5.4	mg/L	Monthly	Grab

The interim limits represent the 95th (monthly average) and 99th (daily maximum) percentile of aluminum concentrations reported during the time period covered by the Order, excluding the concentrations reported in December 2015, which were statistical outliers. All other requirements and conditions of the SPDES permit remain fully in effect and enforceable.