

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 7861

December 5, 2016

Shawn J. Smith, Esq.
283 Main St.
P.O. Box 162
Schoharie, New York 12157

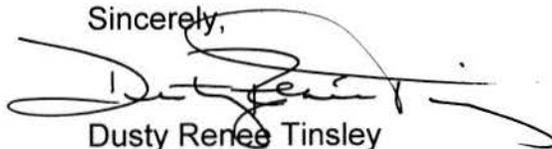
Re: Order on Consent
R4-2016-0617-116
Village of Middleburgh

Dear Mr. Smith:

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

This will also acknowledge receipt of \$1,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: R. Mitchell



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 Part 750 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York (6 NYCRR)

**ORDER ON
CONSENT**

By

R4-2016-0617-116

Village of Middleburgh,

Respondent.

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WHEREAS:

JURISDICTION

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.

RESPONDENT

2. Respondent, Village of Middleburgh, owns and operates a wastewater treatment plant (“WWTP”) located at 174 Baker Avenue, Middleburgh, New York 12122 (Schoharie County)(“Facility”) that operates pursuant to a State Pollution Discharge Elimination System (“SPDES”) permit NY-0192309 (hereinafter “SPDES permit”). The WWTP discharges to Schoharie Creek, a class C waterbody.

INSPECTIONS

3. On February 2 and 4, 2016, Department staff conducted announced inspections of the Respondent’s WWTP. Violations of the ECL and 6 NYCRR were noted.

4. Department staff sent Respondent a Notice of Violation dated March 3, 2016.

FIRST VIOLATION

5. ECL §17-0501(1) states that “It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301.”
6. 6 NYCRR Part 703.2 states that for Class C waterbodies, the turbidity standard is “no increase that will cause a substantial visible contrast to natural conditions”.
7. During the February 2 and 4, 2016 inspections, Department staff observed turbidity that caused an increase in the substantial visible contrast to natural conditions in the Schoharie Creek, a Class C waterbody, to which the WWTP discharges.
8. Respondent’s discharges to the Schoharie Creek, a Class C waterbody, from the WWTP which caused turbidity that increased the substantial visible contrast to natural conditions are violations of ECL §17-0501(1) and 6 NYCRR Part 703.2.

SECOND VIOLATION

9. ECL §17-0511 states 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.”
10. 6 NYCRR Subpart 750-2.8(a)(2) states 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.”
11. Respondent’s WWTP utilizes two clarifiers and a UV disinfection system as part of its disposal system to achieve compliance with its Permit.
12. During the February 2 and 4, 2016 inspections, Department staff determined that:
 - a. one of the disposal system’s clarifiers was non-operational and had been non-operational for more than a year;
 - b. the other clarifier in the disposal system was allowing solids to pass over the weir; and
 - c. the UV disinfection units were filled with cloudy, foamy effluent too turbid to permit adequate disinfection with UV light, which, given material dried onto the UV units, appeared to have occurred previously without the units having been thoroughly cleaned.

13. Respondent failed to properly operate and maintain all disposal facilities installed or used by Respondent to achieve compliance with the conditions of the Permit in failing to have one clarifier operational, having the second clarifier bypassing solids over the weir, and having conditions in the UV disinfection units which prevented adequate disinfection with UV light.

14. Respondent's failure to operate and maintain all disposal facilities, which are installed or used by Respondent to achieve compliance with the conditions of the Permit are violations of 6 NYCRR Subpart 750-2.8(a)(2).

THIRD VIOLATION

15. 6 NYCRR Part 750-1.12(a) states that "Any person possessing a SPDES permit which allows the discharge of wastewater into the surface waters of the State shall post a sign as provided for in subdivision (b) of this section at all discharge points to surface waters, except for those sites where the discharge is composed exclusively of stormwater or those sites for which the requirements of this section have been waived in accordance with subdivision (e) or (f) of this section."

16. 6 NYCRR Part 750-1.12 (b)(1) states that "All SPDES permittees who discharge to surface waters shall erect or post a conspicuous and legible sign of not less than 18 inches by 24 inches bearing the following statement: "N.Y.S. Permitted Discharge Point Permit No. (insert SPDES permit number here). For information on this discharge you can contact: (insert contact information here)." The sign shall also contain the following information: The SPDES permit number as issued by the department; the name and telephone number of the permittee that shall be the business office repository of the permittee as required by this section; and the name, address and telephone number of the regional office in which the discharge is located."

17. During the February 2 and 4, 2016 inspections, Department staff determined that Respondent failed to post signage as provided for in 6 NYCRR Part 750-1.12 (b)(1) at all discharge points to surface waters.

18. Respondent's failure to post signage at all discharge points to surface waters as required by 6 NYCRR Part 750-1.12 (b)(1) is a violation of 6 NYCRR Part 750-1.12(a).

CIVIL PENALTY

19. 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.

20. **Waiver of Hearing.** 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 THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. **Civil Penalty.** With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) of which ONE THOUSAND DOLLARS (\$1,000) 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. ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) 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. **Schedule of Compliance.** Respondents shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance any plans approved thereunder are incorporated into the Order and are enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact and phone number.

III. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

IV. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives 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 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.

VII. **Modification.** 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 the provisions of the 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 obligation to obtain such formal approvals as may be required by this Order.

VIII. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility 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, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

X. **Scope.** 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 Documentation.** 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 accept 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.

XII. **Default.** Respondent shall not be in default of compliance with this Order if they are unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war strike, riot, or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify the Department in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

XIII. **Third Parties.** This Order shall not create any presumption of law or fact that shall inure to the benefit of any person other than the Department, State, or Respondent.

XIV. **Communications.** 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:

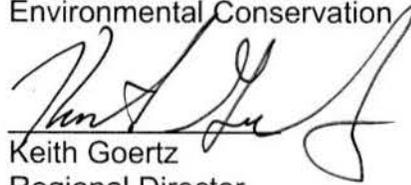
Mayor Matthew Avitabile
Village of Middleburgh
PO Box 789
Middleburgh, New York 12122

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: December 5, 2016
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

Schedule of Compliance

| Action to be Taken | Deadline |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Respondent shall use process controls daily to track the performance of the Facility, including dissolved oxygen and mixed-liquor suspended solids in the oxidation ditch and sludge blanket depth in both clarifiers. Results from the daily process controls shall be recorded in a log book and included in the monthly Facility operation reports. | Effective immediately. |
| Respondent shall arrange for a representative of its contract laboratory to be present at the Facility each month to collect the SPDES compliance samples for biochemical oxygen demand (BOD5), total suspended solids (TSS), and fecal coliform. Laboratory reports and chains of custody shall be submitted for these samples with the corresponding monthly discharge monitoring reports. | Effective immediately and continuing for six months after the effective date of this Order. |
| <p>Respondent shall submit to Department staff, for review and approval, an engineering report prepared by a professional engineer licensed in the State of New York ("Report") which shall include:</p> <p>a. a Comprehensive Performance Evaluation (CPE) and Composite Correction Program (CCP) for the WWTP using the approach outlined in US EPA's Handbook <i>Retrofitting POTWs</i> (EPA/625/6-89/020) and considering Ten-State Standards (the Great Lakes-Upper Mississippi River Board of State and Provisional Public Health and Environmental Managers' <i>Recommended Standards for Wastewater Facilities</i>). The CPE and CCP shall provide, at a minimum, a conditions assessment of all equipment, an evaluation of all major unit processes, and recommendations to achieve the required level of performance.</p> <p>b. a conditions assessment and an evaluation relative to Ten-State Standards of all pump stations in the collection system and, as needed, recommendations to achieve the required level of performance.</p> <p>c. an outline of measures to identify infiltration/inflow (I/I) to the collection system and reduce excessive I/I to an extent that it is economically feasible. The reduction of I/I shall be through continuous measures that may include but not be limited to sewer system metering, evaluation, and rehabilitation and the removal of roof leaders and footing drains from sanitary sewers. Consideration shall also be given to the prevention of future sources of I/I where feasible through measures including but not limited to implementation of standards for sewer installation and requirements to provide for adequate drainage from roof leaders and footing drains in new construction.</p> <p>d. a plan and schedule for implementing the recommendations and measures described in items (a) – (c) above.</p> | February 1, 2017 |

Upon approval by Department staff, the Report, including the schedule contained therein, shall become a part of this Order and shall be enforceable thereunder.

