

**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 7632

March 8, 2017

Mr. John Privitera  
McNamee Lochner Titus & Williams, P.C.  
677 Broadway  
PO Box 459  
Albany, NY 12207

Re: Order on Consent  
R4-2015-0624-75  
Von Roll USA, Inc.

Dear Mr. Privitera:

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

This will also acknowledge receipt of \$50,000 the civil penalty pursuant to Paragraph I.

Sincerely,

*Dusty Renee Tinsley / JV*

Dusty Renee Tinsley  
Assistant Regional Attorney  
Region 4

Enclosure

ec: 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  
R4-2015-0624-75

By

Von Roll USA, Inc.,

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, Von Roll USA, Inc., owns and operates a manufacturing facility at 200 Von Roll Drive, Schenectady, NY 12306 (hereinafter "facility") that operates pursuant to a State Pollution Discharge Elimination System ("SPDES") permit NY-0074489 (hereinafter "SPDES permit").
3. Regulations at 6 NYCRR Part 750-2.1(e) require Respondent to comply with all the terms and conditions of its SPDES permit.
4. Appendix A of this Order contains a list of SPDES permit effluent limit exceedances identified in Respondent's Monthly Discharge Monitoring Reports ("MDMR's") which are violations of the SPDES permit and 6 NYCRR Part 750-2.1(e).
5. Respondent's SPDES permit exceedances contained in Appendix A are violations of 6 NYCRR Part 750-2.7(f).
6. ECL Section 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**

7. 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

In respect to the Order's violations, a civil penalty in the amount of FIFTY THOUSAND DOLLARS (\$50,000) is assessed against the Respondent for the above violations. FIFTY THOUSAND DOLLARS (\$50,000) shall be paid to the Department by company or bank check made payable to the Department of Environmental Conservation at the time this Order is signed, notarized, and returned to the Department. Payment of the civil penalty shall not in any way alter Respondent's obligation to complete performance under the terms of the Order.

II. Schedule of Compliance

Respondent shall comply with the Schedule of Compliance and any plans approved thereunder which are incorporated into the Order and are enforceable thereunder.

III. Summary Abatement

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

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. Communications

For Department:

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

Schenectady, New York 12306

For Respondent:

Von Roll USA, Inc.  
200 Von Roll Drive  
Schenectady, NY 12306

VI. Modifications

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.

VII. Access

For insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

VIII. Effective Date of Order

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

IX. 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, their directors, officers, employees, servants, agents, successors or assigns.

X. Scope of Order

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 or permits issued there under based upon other than existing contamination.

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 officers, directors, agents, servants, employees, successors and assigns; and

C. 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 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 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. Settlement Terms

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

DATED: March 8, 2017  
Rotterdam, New York

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
Keith Goertz  
Regional Director  
Region 4



### SCHEDULE OF COMPLIANCE

<b>Respondent Shall:</b>	<b>Due Date:</b>
1. Submit a contingency plan for review and approval to Department staff addressing how Respondent will monitor and resolve Permit limit exceedances of zinc. The Contingency Plan approved by the Department shall become a part of this Order and enforceable thereunder.	February 28, 2017
2. Submit to Department staff a Revised Best Management Practices (BMP) Plan to reflect work completed during the preparation of the SPDES Outfall Contaminant Reduction Report and for any new manufacturing and/or process control equipment to be installed or already installed as part of the recent expansion project at the facility. The approved Revised BMP shall become a part of this Order.	March 10, 2017



## Appendix A -- DMR Reported Permit Effluent Limit Violations

### **Outfall No. 001A: Cooling Water**

1. Parameter: Total Copper  
Permit Limit: 0.024 mg/L (Daily Maximum)  
April 2012: 0.03 mg/L
2. Parameter: Total Phenolics  
Permit Limit: 0.008 mg/L (Daily Maximum)  
September 2012: 0.14 mg/L
3. Parameter: Total Phenolics  
Permit Limit: 0.008 mg/L (Daily Maximum)  
April 2014: 0.03 mg/L
4. Parameter: Total Phenolics  
Permit Limit: 0.008 mg/L (Daily Maximum)  
April 2015: <0.01 mg/L
5. Parameter: Toluene  
Permit Limit: 0.05 mg/L (Daily Maximum)  
September 2012: 1,700 mg/L
6. Parameter: Toluene  
Permit Limit: 0.05 mg/L (Daily Maximum)  
October 2012: < 1.00 mg/L
7. Parameter: Toluene  
Permit Limit: 0.05 mg/L (Daily Maximum)  
January 2013: < 1.00 mg/L
8. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
January 2012: 0.66 mg/L
9. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
February 2012: 0.87 mg/L
10. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
July 2013: 0.56 mg/L

### **Outfall No. 001A: Cooling Water (continued)**

11. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
December 2013: 0.38 mg/L
12. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
January 2014: 0.52 mg/L
13. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
February 2014: 0.43 mg/L
14. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
September 2014: 0.32 mg/L
15. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
October 2014: 0.32 mg/L
16. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
November 2014: 0.47 mg/L
17. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
January 2015: 0.37 mg/L
18. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
February 2015: 0.48 mg/L
19. Parameter: Zinc  
Permit Limit: 0.3 mg/L (Daily Maximum)  
March 2015: 0.60 mg/L