

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED
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November 2, 2015

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

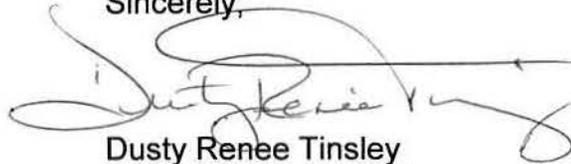
Re: Order of Consent
R4-2015-0713-86

Dear Mr. Dixon:

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

This will also acknowledge receipt of \$4,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: A. Dzierwa
K. O'Connor



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

DEC Case
R4-2015-0713-86

By

Village of Sharon Springs,

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 Sharon Springs, owns and operates a wastewater treatment plant (“WWTP”) located at State Route 10 at North Village Line, Sharon Springs, New York (Schenectady County)(“Facility”) that operates pursuant to a State Pollution Discharge Elimination System (“SPDES”) permit NY-0033588 (hereinafter “SPDES permit”). The WWTP discharges to Brimstone Creek, a class C stream.

Inspections

3. On April 20, 2015, Department staff conducted an announced comprehensive inspection of the Respondent’s WWTP. Violations of the ECL and 6 NYCRR were noted. Department staff sent Respondent a Notice of Violation dated May 7, 2015.

4. On May 28, 2015, Department staff conducted an inspection of the Respondent’s WWTP. Continuing violations of ECL Article 17and 6 NYCRR Part 750 were noted.

First Violation

5. ECL §17-0505 states 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 section 17-0701 or title 8 hereof are prohibited.”
6. ECL §17-0701(1)(a) states that “It shall be unlawful for any person . . . to . . . Make or cause to make or use any outlet or point source for the discharge of sewage, industrial waste or other wastes or the effluent therefrom, into the waters of this state”
7. 6 NYCRR Subpart 750-1.4(a) states that “no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by” its Permit.
8. 6 NYCRR Subpart 750-2.8(b)(2) states that bypass of the treatment system is prohibited and the Department may take enforcement action against a permittee for bypass.
9. On or around October 1, 2014, for an unknown duration, untreated WWTP collection system overflow was discharged to Brimstone Creek after the main sewer line clogged, backing up into an abandoned sewer lateral, and flow virtually stopped going to the WWTP (“October 2014 Discharge”).
10. Respondent’s October 2014 Discharge was a violation of ECL §§17-0505 and 17-0701(1)(a) and 6 NYCRR Subparts 750-1.4(a) and 750-2.8(b)(2).

Second Violation

11. 6 NYCRR Subpart 750-2.9(c)(4) states, “The chief fiscal officer of any municipality subject to this subdivision shall certify in writing to the department as an attachment to its February discharge monitoring report that the municipality is complying with the provisions of this subdivision and, if applicable, is complying with the implementation schedule in the program adopted in accordance with paragraphs 1, 2 and 3 of this subdivision or if such compliance certification cannot be provided to the department, satisfactory explanation for deviation from the provisions of this subdivision must be provided.”
12. Respondent failed to timely submit the annual flow certification form which was due on March 28, 2015.
13. Respondent’s failure to timely submit the annual flow certification form is a violation of 6 NYCRR Subpart 750-2.9(c)(4).

Third Violation

14. 6 NYCRR Subpart 750-2.5(a)(1) states that the permittee shall comply with all recording, reporting, monitoring and sampling requirements in the permit.
15. The SPDES Permit states at page 3, paragraph (c) that a monthly Wastewater Facility Operation Report shall be submitted to the Regional Water Engineer.
16. Respondent had not filed its SPDES permit Monthly Facility Operation Reports since October of 2014.
17. Respondent's failure to file its SPDES permit Monthly Facility Operation Reports since October of 2014 are violations of 6 NYCRR Subpart 750.2.5(a)(1) and SPDES Permit Page 3, Paragraph (c).

Fourth Violation

18. 6 NYCRR Subpart 750-2.5(a)(1) states that the permittee shall comply with all recording, reporting, monitoring and sampling requirements in the permit.
19. The SPDES Permit states at page 3, paragraph (b) that monthly Discharge Monitoring Reports shall be submitted to the Regional Water Engineer.
20. As of the April and May 2015 inspections, Respondent had not filed its SPDES permit monthly Discharge Monitoring Reports since October of 2014.
21. Respondent's failure to file its SPDES permit monthly Discharge Monitoring Report since October of 2014 are violations of 6 NYCRR Subpart 750-2.5(a)(1) and SPDES Permit Page 3, Paragraph (b).

Fifth Violation

22. 6 NYCRR Subpart 750-2.1(i) states that "The permittee shall furnish to the department, within a reasonable time as set forth in the department request, any information that the department may request to determine whether cause exists for modifying, suspending, or revoking a SPDES permit, or to determine compliance with the permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee."
23. Department staff requested from Respondent an Environmental Benefit Permit Strategy ("EBPS") application in 2012. This was not submitted. A Notice of Violation was issued in 2014 for the failure to submit the EBPS application with an April 2014 deadline for its submittal. The EBPS application was not submitted.
24. Respondent's failure to submit the requested EBPS application is a violation of 6 NYCRR Subpart 750-2.1(i).

Sixth Violation

25. 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.”
26. Respondent’s UV disinfection system is a disposal facility installed or used by the Respondent to achieve compliance with the conditions of the permit.
27. Respondent’s UV disinfection system was observed by Department staff during the April 20, 2015 inspection to be inoperable resulting in Fecal Coliform violations in June, July, August, September, and October of 2014 with additional violations in previous years.
28. Respondent’s failure to properly operate and maintain its UV disinfection system is a violation of 6 NYCRR Subpart 750-2.8(a)(2).

Seventh Violation

29. 6 NYCRR Subpart 750-2.5(a)(1) states that the permittee shall comply with all recording, reporting, monitoring and sampling requirements in the permit.
30. The SPDES Permit states the effluent limitations, seasonally from June 1 to October 31 to include, “Effluent disinfection required” and expressly referencing Chlorine residual and fecal coliform. See SPDES Permit Effluent Limitations and Monitoring Requirements, Effluent Limitations, Page 2.
31. Respondent had Fecal Coliform exceedances in June, July, August, September, and October of 2014 with additional violations in previous years.
32. Respondent’s failure to meet seasonal disinfection effluent limitations are violations of 6 NYCRR Subpart 750-2.5(a)(1) and SPDES Permit Effluent Limitations and Monitoring Requirements, Seasonally, from June 1 to October 31, Page 2.

Eighth and Ninth Violations

33. 6 NYCRR Subpart 750-2.5(a)(1) states that the permittee shall comply with all recording, reporting, monitoring and sampling requirements in the permit.
34. 6 NYCRR Subpart 750-2.5(c)(1) states that “The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by a SPDES permit, and records of all data used to complete the application for the permit, for a period of at least 5 years from the date of the sample, measurement, report or application.”
35. The SPDES Permit states monitoring requirements to include pH, settleable solids, total residual chlorine, and temperature with a daily frequency. See SPDES Permit Effluent Limitations and Monitoring Requirements, Monitoring Requirements, Page 2.

36. During the April 20, 2015 inspection, Department staff observed that Respondent had not completed daily sampling, including pH, temperature, and settleable solid measurements.

37. Respondent's failure to complete daily sampling are violations of 6 NYCRR Subpart 750-2.5(a) and SPDES Permit Effluent Limitations and Monitoring Requirements, Monitoring Requirements, Page 2.

38. As daily sampling has not occurred, records of daily sampling have not been maintained as required.

39. Respondent's failure to maintain records of daily sampling are violations of 6 NYCRR Subpart 750-2.5(c)(1).

Tenth Violation

40. 6 NYCRR Subpart 750-2.5(a)(1) states that the permittee shall comply with all recording, reporting, monitoring and sampling requirements in the permit.

41. 6 NYCRR Subpart 750-2.5(c)(1) states that "The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by a SPDES permit, and records of all data used to complete the application for the permit, for a period of at least 5 years from the date of the sample, measurement, report or application."

42. During the April 20, 2015 inspection, Department staff observed that Respondent failed to keep records for a minimum of five years.

43. Respondent's failure to keep records as required are violations of 6 NYCRR Subpart 750-2.5(a)(1) and 6 NYCRR Subpart 750-2.5(c)(1).

Eleventh Violation

44. 6 NYCRR Subpart 750-2.5(a)(1) states that the permittee shall comply with all recording, reporting, monitoring and sampling requirements in the permit.

45. During the April 20, 2015 inspection, Department staff observed that Respondent was not recording the flow digital totalizer daily.

46. Respondent's failure to record the flow digital totalizer daily is a violation of 6 NYCRR Subpart 750-2.5(a)(1).

Twelfth Violation

47. 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."

48. The flow chart recorder is part of the disposal facility which is installed or used by the Respondent to achieve compliance with the conditions of the SPDES Permit.

49. During the April 20, 2015 inspection, Department staff observed that Respondent is not consistently changing the flow chart recorder resulting in inaccurate measurements for flow and loading rates.

50. Respondent's failure to consistently change the flow charge recorder, resulting in inaccurate measurements is a violation of 6 NYCRR Subpart 750-2.8(a)(2).

Thirteenth, Fourteenth, and Fifteenth Violations

51. 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. Proper operation and maintenance also includes as a minimum, the following: (i) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. A facility or system is critical if it contains process equipment that is essential for proper operation and necessary to achieve compliance with the applicable SPDES permit effluent limits; (ii) Written procedures for operation and maintenance, training new operators, adequate laboratory controls and appropriate quality assurance. This provision requires the operation of installed backup or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit."

52. A preventative/corrective maintenance program includes plant process controls, alarm systems, and generators.

53. During the April 20, 2015 inspection, Department staff observed that Respondent had not completed plant process controls, the alarm system was not being properly maintained as there was no Facility phone line allowing the alarm to call out in the event of an emergency controls, and the standby emergency generator had not been properly maintained and was not working at the time of the inspection.

54. Respondent's failure to complete plant process controls and have an operable alarm system and generator are violations of 6 NYCRR Subpart 750-2.8(a)(2).

55. Operation and maintenance manuals and maintenance schedules constitute written procedures for operation and maintenance.

56. During the April 20, 2015 inspection, Respondent's did not have operation and maintenance manuals, maintenance schedules, or otherwise have written procedures for operation and maintenance.

57. Respondent's failure to have written procedures for operation and maintenance are violations of 6 NYCRR Subpart 750-2.8(a)(2).

Sixteenth Violation

58. 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.”

59. Proper operation and maintenance of a disposal system includes the emptying the sludge digester and drying beds to provide adequate storage for waste.

60. Respondent did not to timely empty the sludge digester and drying beds to provide adequate storage for waste.

61. Respondent’s failure to timely empty the sludge digester and drying beds to provide adequate storage for waste is a violation of 6 NYCRR Subpart 750-2.8(a)(2).

Civil Penalty

62. 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.

63. **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 TWENTY THOUSAND DOLLARS (\$20,000) of which FOUR THOUSAND DOLLARS (\$4,000) 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. SIXTEEN THOUSAND DOLLARS (\$16,000) 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 civil penalty shall not in any way alter Respondent’s obligation to complete performance under the terms of the 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 advise, 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:

Honorable Doug Plummer
Mayor, Village of Sharon Springs
Village Hall, PO Box 217
Sharon Springs, NY 13459

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

DATED: November 2, 2015
Rotterdam, New York

Basil Seggos
Commissioner Designee
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

Schedule of Compliance

Action to be Taken	Deadline
<p>Submit to the Department a Comprehensive Performance Evaluation (CPE) of the WWTP as prepared by a professional engineer licensed in New York state which shall include:</p> <ul style="list-style-type: none"> - a summary of the condition of all processes and components of the treatment plant, - recommendations to bring each component back to peak operating condition, and - an expeditious schedule for completing the work. <p>The CPE shall address the Facility issues raised in each and every violation contained in the Order, including the actions taken by Respondent to correct the violation.</p>	December 15, 2015
<p>Submit to the Department all outstanding documents as outlined in the May 7, 2015 Notice of Violation and April 20, 2015 Inspection Report, including, but not limited to:</p> <ul style="list-style-type: none"> - verifiable portions of unsubmitted DMR's; and - corrected DMR's for October 2014 to present. 	December 15, 2015
<p>Respondent shall maintain accurate daily log books at the Facility. Respondent shall make available all results to Department staff upon request.</p>	Effective immediately
<p>Respondent shall record all daily activities, maintenance, sampling, and flow data. Respondent shall make available all results to Department staff upon request.</p>	Effective immediately
<p>Respondent shall provide a permanent location for record retention of all required documents (designated retention location). All missing or misplaced documents shall be located or recreated where possible and kept at the designated retention location. This includes:</p> <ul style="list-style-type: none"> - Facility as-built plans, - wet weather plans, - O&M manuals, - the Facility's SPDES permit, - monthly discharge monitoring reports and operation reports, and - any other document required by 6 NYCRR Part 750. 	Effective immediately
<p>Respondent shall have an operator at the WWTP a minimum of 34 hours per week until the Facility is back to full capacity. Department staff will determine when the Facility is back to full capacity and will so notify Respondent in writing. Once Respondent is notified by Department staff that it is back to full operational capacity, Respondent shall have an operator at the plant a minimum of 24 hours per week. An operator shall be at the plant for a minimum of 2 hours each day on Saturday and Sunday to inspect the WWTP, conduct daily sampling, rake the bar screen, record flow, and take whatever other action may be necessary or appropriate.</p>	Effective immediately

<p>Respondent shall begin process controls to track the performance of the Facility, to include at a minimum:</p> <ul style="list-style-type: none"> - Clarifier blanket depth, - Dissolved oxygen, and - MLSS. <p>Results shall be recorded in a log book and included in the monthly operation report.</p>	<p>Effective immediately for Clarification blanket depth and Dissolved Oxygen.</p> <p>Within 15 days of the effective date of this Order for MLSS.</p>
<p>Respondent shall complete the attached Certification of Compliance form (“COC”) for the action items set forth in the Schedule of Compliance with an “effective immediately” deadline and submit it to the Department, including the letter describing the corrections made referenced therein.</p>	<p>Within 10 days of the effective date of this Order.</p>