

**STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Violations of Article 17
of the Environmental Conservation Law
("ECL") of the State of New York and Title 6 of the
Official Compilation of Codes, Rules and Regulations
of the State of New York ("6 NYCRR") Part 750

ORDER ON CONSENT

DEC Case No. R5-20130913-2086
SPDES Permit # 023-9682

By

Town of Willsboro,

Respondent.

I. WHEREAS:

1. The Department of Environmental Conservation ("DEC" or "the Department") is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this State, pursuant to the Environmental Conservation Law ("ECL") §3-0301. In particular, the Department has jurisdiction over the enforcement of ECL Articles 17 and 71, the issuance of State Pollutant Discharge Elimination System Permits ("SPDES Permits") pursuant to ECL Articles 3 and 17, and the regulations promulgated thereunder at 6 NYCRR Parts 650 and 750.

2. The Town of Willsboro ("Respondent" or "Town") is a municipal agency pursuant to 6 NYCRR § 750-1.2 (51) with mailing address of P.O. Box 370, 5 Farrell Road, Willsboro, New York 12996. Respondent owns and operates Willsboro Sewer District #1 and its associated wastewater treatment plant (the "WWTP"). Respondent's WWTP discharges to the Boquet River, a Class C (t) waterbody of the State of New York.

3. The Town is a "person" as that term is defined in 6 NYCRR 750-1.2(64).

4. The Town is a "permittee" as that term is defined in 6 NYCRR 750-1.2(63).

Background

Failure of Rotating Biological Contactor ("RBC")

5. On September 1, 1992 the Department issued the Town SPDES Permit # 0239682 for the operation of its WWTP.

6. The Town's most-current SPDES Permit¹ imposed a design capacity flow limitation of 75,000 gallons per day (GPD) on the operation of the WWTP.

7. In September 2013 the rotating biological contactor ("RBC"), a component of the Town's WWTP, failed, causing a condition that forced the Town to temporarily convert the flow equalizer tank into an activated sludge basin, rather than replace the RBC at that time.

8. Since removing the RBC, the Town has operated the WWTP using the existing equalization basin as an activated sludge processor.

9. The Town and Department agree that using the existing equalization basin as an activated sludge processor does not comply with the Town's SPDES Permit.

10. The Town retained Cedarwood Engineering Services, PLLC to evaluate the WWTP operation and to recommend WWTP upgrades.

11. In December 2014 Department staff reviewed an engineering report prepared by Cedarwood Engineering Services, PLLC for the purposes of upgrading the WWTP.

12. The Town's Operation and Maintenance Manual for the WWTP ("O & M Manual"²) advises that the Town weigh the WWTP RBC shaft on a weekly basis. Monitoring the design limit for biomass growth on the RBC media in this way is meant to prevent overloading the RBC bearing. From June 2010 to May 2011, the Town failed to

¹ See permit modification dated November 14, 2014 and April 29, 2010 renewal and modification.

² See "Appendix C, Installation, Operation and maintenance Manual For the Sewage Treatment Plant at Willsboro, New York" dated August 1994 prepared by U.S. Filter, section IV, H., page 14 "[t]he RBC should be weighed on a weekly basis to ensure the design limit for the biomass growth on the RBC media is not exceeded."

weigh the WWTP RBC shaft on a weekly basis, an oversight that may have contributed to the failure of the RBC.

Other Violations

13. On April 28, 2011, May 4, 2011 and June 12, 2013, the WWTP experienced bypasses of the RBC during heavy rains and consequent high rates of flow into the WWTP. The cause or causes of the high flows, and need to bypass the RBC, are related to excessive infiltration/inflow to the tributary system.

14. The Town's Discharge Monitoring Report ("DMR") for the period that began on February 1, 2011 and ended on February 28, 2011 showed that the 5-day removal for biochemical oxygen demand ("BOD") was 83%³; for the monitoring period April 1, 2011 to April 30, 2011, the 5-day removal for BOD was 79%; for the monitoring period June 1, 2011 through June 30, 2011, the 5-day removal for BOD was 78%.

15. The Town's DMR Report for the monitoring period that began on April 1, 2011 and ended on April 30, 2011 showed that the WWTP's average flow rate was 92,000 gallons per day; the DMR for the monitoring period that began on May 1, 2011 and ended on May 31, 2011 showed that the WWTP's average flow rate was also 92,000 gallons per day.

16. In October and November 2013, the Town failed to retain the services of an appropriately-certified WWTP operator.

Enforceable Provisions of Law

17. 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 [SPDES] permit. 6 NYCRR 750-2.8(a)(2)

³ The Town's SPDES Permit imposed minimum limit of 85% removal of influent concentration for biochemical oxygen demand, 5-day ("BOD₅") and Total Suspended Solids (TSS)

18. The permittee shall identify all inflow to the tributary system and remove excessive infiltration/inflow to an extent that is economically feasible. 6 NYCRR 750-2.9(a)(3)

19. The Town is operating an activated sludge process. The Town must retain a chief WWTP operator with a minimum operator grade of 2A. 6 NYCRR 650.12(a)
Table 1.

20. Pursuant to ECL § 71-1929 (1), any person who violates ECL Article 17, Titles 1 through 11 and 19, or the rules, regulations, or determinations of the Commissioner promulgated thereto, shall be liable for penalties of up to \$37,500 per day for each violation.

21. Respondent hereby affirmatively waives its right to a hearing in this matter in the manner as provided by law, consents to the issuance of this Order and agrees to be bound by the terms, provision and conditions contained herein.

NOW, having considered this matter and being duly advised, it is **ORDERED**:

II. CIVIL PENALTY

- A. **Civil Penalty.** Respondent is assessed a civil penalty in the amount of **SIX THOUSAND FOUR HUNDRED DOLLARS (\$6,400)**.
- B. **Payable Penalty.** Not later than thirty (30) days from the Effective Date of this Order, Respondent shall pay to the Commissioner the sum of **ONE THOUSAND DOLLARS (\$1,000)**. Respondent shall remit the sum of \$1,300 by certified check or money order made payable to the "Commissioner of the Department of Environmental Conservation" and mailed to NYSDEC - Region 5 Office of General Counsel, Attn: Betty Douglas, 1115 NYS Route 86, PO Box 296, Ray Brook, New York 12977-0296.
- C. **Suspended Penalty.** The remaining penalty of **\$5,400** shall be suspended provided that Respondent complies with the terms and

conditions of this Order on Consent, including the Schedule of Compliance attached to and made a part of this Order as Schedule "A."

- D. **Stipulated Penalties.** In addition to the civil penalty stated in Paragraph I.A., above, Respondent shall be subject to the following stipulated penalties if, for any reason other than force majeure as provided in the Order, Respondent fails to comply with the deadlines detailed in Schedule "A" of this Order:

PERIOD OF NON-COMPLIANCE	PER-DAY PENALTY
1 - 30 days late in complying:	\$187.50 per day
31 - 59 days late in complying:	\$262.50 per day
More than 60 days late in complying:	\$375 per day

- E. **Notice of Noncompliance.** In the event that the Department determines, in the Department's sole discretion, that Respondent failed to timely and fully comply with any provision of this Order, the Department may serve upon Respondent a notice of noncompliance setting forth the nature of the violation(s). Service of such notice may be by personal service or by certified mail return receipt requested (restricted delivery not required) at Respondent's address as specified in Paragraph VI of this Order, or, if such service is refused or cannot be completed, by ordinary mail.
- F. **Review of Notice of Noncompliance.** If the Department issues a notice of noncompliance, the Department shall provide Respondent the opportunity, upon written request made within ten (10) business days after the date of such notice, to meet with involved Department staff to discuss the circumstances of issuance of the notice. A request for a meeting shall not suspend or otherwise affect Respondent's obligation to comply with all terms of this Order, including the notice of noncompliance, and shall not affect any obligation to pay penalties thereunder, which shall continue to accrue from the date of commencement of the violation for as long as the violation continues.

III. DURATION

This Order shall take effect upon the Effective Date, which is the date the Order is signed by the Commissioner of Environmental Conservation, or his designee. The Order shall remain in effect until Respondent has satisfied the requirements of the Order, unless the parties agree to otherwise terminate the Order.

IV. OTHER ACTIONS NOT AFFECTED

This Order shall not be construed to prevent the Department from instituting any action or proceeding at law or equity for any violation not specifically alleged in this Order.

V. RESERVATION OF RIGHTS

This Order shall not be construed as a release or waiver by the Department of its rights to:

- A. Seek injunctive relief to abate any violation of law or this Order;
- B. Seek penalties as provided in paragraph I of this Order and an entry of judgment therefor;
- C. Seek penalties and other relief for any violations not set forth in this Order;
- D. Seek to modify, suspend, or revoke any Department-issued permit;
- E. Seek any applicable criminal sanctions against any party; or
- F. Seek issuance by the Commissioner or his duly authorized representative, of a summary abatement Order against Respondent.

In addition, the Department reserves all such rights as it has to require Respondent to take any additional measures required to protect human health or the environment.

VI. COMMUNICATIONS

Correspondence to the Department required under this Order shall be provided to:

Tamara J. Venne
Environmental Program Specialist
New York State Department of Environmental Conservation,
Region 5
P.O. Box 296

Ray Brook, New York 12977
(518) 897-1241
tamara.venne@dec.ny.gov

With a copy to:

Scott Abrahamson
Assistant Regional Attorney
Office of General Counsel - Region 5
1115 NYS Route 86, P.O. Box 296
Ray Brook, NY 12977
(518) 897-1214
Fax: (518) 897-1394
scott.abrahamson@dec.ny.gov

Correspondence to Respondent required under this Order shall be provided to:

Hon. Shaun Gilliland
Supervisor, Town of Willsboro
Willsboro Town Hall
P.O. Box 370, 5 Farrell Road
Willsboro, New York 12996
(518) 963-8933

Any party may change its designee(s) under this paragraph upon written notice to the other party.

VII. MODIFICATION

A. No term, condition, understanding or agreement purporting to modify or vary the terms of this Order shall be binding unless made in writing and subscribed by the party to be bound.

B. No change in this Order shall be effective except as set forth in written Order of the Commissioner or the Commissioner's designee:

(1) Upon written application by Respondent and with specific justification for the relief sought, or

(2) Upon the Commissioner's own findings after an opportunity to be heard has been given to Respondent, or

(3) Pursuant to the summary abatement provisions of the ECL.

C. In those instances in which the Respondent desires to change any of the provisions, terms or conditions of this Order, it shall make written application to the Department contact provided in Paragraph VI of this Order setting forth the grounds for the relief sought and such changes, if agreed to by the Department, shall not become effective except as specifically set forth by written order of the Commissioner.

VIII. FORCE MAJEURE

Respondent shall not suffer any penalty under this Order, or be deemed to be in violation hereof or be subject to any proceeding or action if Respondent's compliance with any requirement hereof is rendered impossible by a natural event, war, strike, work stoppage, delays attributable to any governmental body other than the Department in issuing permits or approvals needed on Respondent's property, riot or other catastrophe as to which negligence or misconduct on the part of Respondent was not the proximate cause; provided, however, that Respondent shall make best efforts to comply nonetheless and shall, within seventy-two (72) hours, notify the office of the Assistant Regional Attorney by telephone and the Department in writing, pursuant to the communications paragraph set forth in Paragraph VI of this Order, after obtaining knowledge of any such condition or event, and shall request an appropriate extension or modification of this Order.

IX. INDEMNIFICATION

Respondent shall indemnify and hold the Department, the State of New York, and their representatives, employees, and contractors 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 this Order by the Respondent, its respective directors, officers, trustees, employees, servants, agents, successors (including successors in title) and assigns.

X. ENTIRE AGREEMENT

This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced in this Order.

XI. EFFECTIVE DATE

The Effective Date of this Order is the date on which the Commissioner or the Commissioner's representative signs this Order.

DATED: Ray Brook, New York
_____, 2015
("Effective Date")

JOSEPH J. MARTENS, Commissioner
New York State Department
of Environmental Conservation

By: _____
Robert S. Stegemann
Regional Director - Region 5

SCHEDULE "A"
 Schedule of Compliance
 Town of Willsboro
 DEC Case No. R5-20130913-2086

1. **Immediately upon execution of this Order by the Town**, the Town shall employ a 2A or higher certified wastewater operator, a minimum of 30 days per calendar quarter at a minimum of 2 hours per day, to oversee operations at the WWTF until such time as the activated sludge mode operations are discontinued.
2. At any time during the term of this Order, the Department will acknowledge, in writing, to the Town of Willsboro and New York Water Environment Association (or its designee) that Robert Murphy completed one or more years of hands-on operating experience at the Town of Willsboro Wastewater Treatment Plant ("WWTP"), which for that period of time was operated as an activated sludge WWTP. The Department will request, in writing, that New York Water Environment Association (or its designee) recognize this experience and count it fully toward Mr. Murphy's qualification as a 2A operator.
3. **No later than August 31, 2015** the Town shall submit a written request to the Department to modify its SPDES Permit to include the requirement for a collection system Inspection and Maintenance program with Annual Reporting.
4. **No later than September 30, 2015** the Town shall install a Department-approved influent flow measurement device at the WWTP.
5. **No later than December 31, 2015** the Town shall submit to the Department for approval a written sanitary sewer inspection and maintenance program (I & M program) and implement the approved program within sixty (60) days of the Department's written approval. An annual report summarizing the tasks completed each year in compliance with the I & M program must be submitted to the Department by January 31 each following year until all items in the I & M program schedule have been satisfied.
6. The Town shall comply with the following deadlines:

Required Task	Deadline
Submit approvable project plans and specifications to Department to construct an activated sludge WWTP; plans and specifications shall comply with the requirements of 6 NYCRR 750-2.10	No later than April 1, 2017

Required Task	Deadline
Advertise bids for construction	No later than September 30, 2017
Award bids for construction	No later than December 1, 2017
Issue Notice to Proceed	No later than February 1, 2018
Commence construction; all construction must comply with the requirements of 6 NYCRR 750-2.10	No later than March 1, 2018
Complete construction	No later than May 1, 2019
Asset Management Plan	Deferred. Nothing in this Order shall be construed as a waiver of the Department's authority to request that the Respondent submit to the Department by a date certain an approvable Asset Management Plan, which shall comply with the then-current guidance, policies, regulations, or statutes administered by the Department.



TOWN OF WILLSBORO
OFFICE OF THE TOWN CLERK

Established Resolution:

Resolution:

Supervisor Gillilland called for a motion for the Town Board to allow him to sign DEC Consent order. Charles Lustig moved to sign upon completion of attorney review. Lorilee Sheehan seconded.

Vote Results:

Steve Benway	AYE	<u>X</u>	NOE	_____
Lane Sayward	AYE	<u>X</u>	NOE	_____
Lorilee Sheehan	AYE	<u>X</u>	NOE	_____
Charles Lustig	AYE	<u>X</u>	NOE	_____
Shaun Gillilland	AYE	<u>X</u>	NOE	_____

Approved

Supervisor's Comments:

Town Clerk *Bridget* Date 7/16/15

