

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article(s) Article 17 of the
Environmental Conservation Law ("ECL") and:

ORDER ON
CONSENT

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

DEC Case No.:
R3-20040308-27

City of Middletown, Department of Public Works,

Respondent(s).

WHEREAS:

1. The Department of Environmental Conservation ("DEC" or "the Department") is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State pursuant to §3-0302 of the Environmental Conservation Law ("ECL").
2. DEC has jurisdiction over the abatement and prevention of pollution of state waters pursuant to ECL Section 17-0101, et al. and Title 6 NYCRR Part 750, et seq. This jurisdiction authorizes DEC to regulate the discharge of pollutants from point sources into the waters of the State in conformity with the Federal Clean Water Act, 33 U.S.C. Section 1251, et seq.
3. Pursuant to 6 NYCRR § 751.1, no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by a SPDES permit issued to such person pursuant to 6 NYCRR Part 750 et seq. and ECL Article 17, Title 8.

4. Pursuant to 6 NYCRR § 754.4(b) the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the provisions of the permit.

5. Respondent City of Middletown, Department of Public Works, is a municipal agency maintaining offices at City Hall, 16 James Street, Middletown, NY 10940-1587, and is the operator of City of Middletown WWTP, located at 159 Dolson Avenue, in Middletown (the "Site" or the "Facility").

4. Article 17-0809 Effluent Violations:

The 12 monthly Discharge Monitoring Reports (DMRs) for the period of February 2003 through January, 2004, which indicate Forty-Six (46) separate and distinct SPDES permit violations:

- (A) violation of the Ammonia Nitrogen (NH₃) limit of 3.6 mg/l on 3 occasions;
- (B) violation of the Ammonia Nitrogen (NH₃) limit of 8.9 mg/l on 3 occasions;
- (C) violation of the Total Suspended Solids-30 day mn (TSS) as follows:
 - (1) limit of 1500 #/d on 1 occasion, the TSS (7-day Arth. mean) limit of 45mg/l 1 occasion,
 - (2) TSS (30 day) limit of 30 mg/l on 1 occasion,
 - (3) TSS (7 day) limit of 939 #/d on two occasions, and
 - (4) the Suspended Solids (SS) minimum percent removal limit of 85% on 12 occasions;
- (D) violation of Ultimate Oxygen Demand (UOD) of 37.4 mg/l and 1871 #/d on 5 occasion and 5 occasions, respectively;
- (E) violation of fecal (7 day) limit of 400 MPN/100 ml on 4 occasions, fecal (30 day) limit of 200 MPN/100ml on 1 occasions; and
- (F) violation of the settleable solids limit of 0.1 ml/l on 4 occasions and the monthly flow limit of 6.0 MGD on 4 occasions.

5. By reason of the foregoing, Respondent has violated ECL Section 17-0809 on 46 separate and distinct occasions.

6. ECL § 71-1929 provides for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each violation of Article 17, or any regulations, permits or Orders issued thereunder. Pursuant to ECL § 71-1929, a person who violates any of the provisions of, or who fails to perform any duty imposed by ECL Article 40 or the rules or regulations of the Department promulgated pursuant thereto, or the terms of any certificate or permit issued thereunder, shall, *inter alia*, be liable for a penalty of not to exceed twenty-five thousand dollars (\$25,000) per day for each violation.

7. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

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

I. Civil Penalty: In respect of the violations described above, a civil penalty in the amount of \$15,000.00 is hereby assessed against Respondent, of which \$2,000.00 shall be paid by Respondent to the Department with 30 days of execution of this Order by personal check made payable to the order of "Commissioner - NYSDEC". The DEC case number appearing on the first page of this Order shall be endorsed on the face of the check or money order. The payment shall be sent to NYSDEC, 21 South Putt Corners Road, New Paltz, NY 12561, Attention: Division of Legal Affairs - Civil Penalty Coordinator.

II. Other Payments – Additional Penalties: In the event that Respondent fails to strictly and timely comply with any provision of this Order, and the annexed Schedule of Compliance, if any, the suspended portion of the penalty, \$13,000.00 shall be due and payable. To this end, in the event that the Department determines that Respondent has violated any provision of this Order, the Schedule A, or the

Interim Limits the Department may serve upon the Respondent a notice of noncompliance as described in Paragraph IV below which shall set forth the nature of the violation(s) and the calculation of stipulated penalties due. Such notice shall be deemed a part of this Order. Respondent shall deliver the full stipulated penalty amount to DEC within 10 business days after receipt of such notice. Neither the Department's demand for payment of a stipulated penalty, nor Respondent's payment thereof, shall discharge Respondent from the obligation to comply with any obligation established under this Order. The payment of stipulated penalties as set forth above shall not limit the Department's right to seek such other relief as may be authorized by law. Neither the Department's demand for payment of a suspended penalty, nor Respondent's payment thereof, shall discharge Respondent from the obligation to comply with any obligation established under this Order.

III. Schedule of Compliance. Respondent shall strictly comply with the terms of this Order and with the attached Schedule of Compliance, and the Interim Limits, including any report(s), plan(s), proposal(s) and other submissions made pursuant thereto. The Schedule of Compliance and all such submissions are hereby deemed incorporated into this Order, upon approval by the Department if such approval is required, and shall be fully enforceable as part of this Order.

IV. Notice of Noncompliance: In the event that the Department determines, in the Department's sole discretion, that the Respondent has failed to timely and fully comply with any provision of this Order, the Department may serve upon the 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 the Respondent's address as specified in Paragraph 3 of this Order, or, if such service is refused or cannot be completed, by ordinary mail. Upon receipt of such notice, Respondent shall immediately cease operation of the Facility, if the notice so directs, or modify operations in such manner as may be specified in the notice. If the Department subsequently determines that Respondent has

brought the Facility back into compliance with the terms of this Order, the Department may notify Respondent in writing that operation of the Facility may resume. Respondent shall not resume operation of the Facility in the absence of such written notification.

V. Review of Notice of Noncompliance: If DEC issues a notice of noncompliance, DEC shall provide the Respondent the opportunity, upon written request made within ten business days after the date of such notice, to meet with involved DEC 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.

VI. Full Settlement: Until fully remediated in accordance with this Order, all violations described above shall be considered continuing violations. The Department shall not institute any action or proceeding for penalties or other relief for the violations described above other than those actions and penalties set forth in this Order, for so long as Respondent remains in compliance with this Order. Any failure by Respondent to comply fully with the terms of this Order may subject the Respondent to further enforcement action for the violations described above. Compliance with this Order shall not excuse nor be a defense to charges of any violations of the ECL or any regulation or permit issued thereunder, which may occur subsequent to the date of this Order.

VII. Effect: (a) Respondent waives its right to contest, in any hearing or judicial action or otherwise, any allegation by DEC of the facts alleged herein or that the conduct described in this Order occurred and was in violation of law, as alleged herein.

(b) The Department will not seek to deny, revoke or suspend a permit held or sought by Respondent solely on the basis of the violations set forth in this Order, although such violations may be considered in partial support for such action together with other relevant matters.

VIII. Submissions: All reports and submissions herein required shall be made to the Region 3 headquarters, New York State Department of Environmental Conservation, 21 South Putt Corners Road, New Paltz, New York 12561, attention: Regional Water Engineer, DEC, Tarrytown, with an additional copy to the attention of the DEC Region 3 Enforcement Coordinator. Respondent shall be responsible for the content of any submissions made pursuant to this Order. Submission of any material containing assertions of fact shall be considered an affirmative representation by Respondent of the truth of such assertions. Respondent shall be in violation of this Order if any submission is of such poor quality that it does not constitute a good faith effort to comply with the provisions of this Order.

IX. Review of Submitted Remedial Plans and Proposals. After review of any remedial plan or proposal required by this Order and its Schedule of Compliance, the Department shall notify Respondent, in writing, of its approval or disapproval of the submission. If the Department approves the submission, Respondent shall implement it in accordance with its schedule and terms, as approved. If the Department disapproves the submission, the Department shall provide to Respondent written notice of its disapproval, specifying with reasonable particularity the grounds for disapproval. Within 30 days after Respondent receives written notice of disapproval, Respondent shall submit a revised submission which fully responds to each of the Department's specified grounds for disapproval. After the Department's receipt of Respondent's revised submission, the Department shall notify Respondent, in writing, of its approval or disapproval. If the Department approves the revised submission, Respondent shall implement it in accordance with its schedule and terms, as approved. 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 DEC to make it approvable. If the Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submission, the Respondent shall be in violation of this Order. Upon Department approval, a submission or revised submission shall be deemed incorporated into this Order.

X. Notice of Work: Respondent shall provide notice to the Department of any excavating, drilling, sampling, construction or start-up of equipment to be conducted pursuant to the terms of this Order, if any, at least five (5) working days in advance of such activities.

XI. Inspections: For the purpose of insuring compliance with this Order, and with applicable provisions of the ECL and regulations promulgated thereunder, representatives of this Department shall be permitted access to the facility and to relevant records during reasonable hours to inspect and/or perform such tests which the Department deems appropriate to determine the status of Respondent's compliance.

XII. Conveyance: In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Facility, Respondent shall, not less than 30 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XIII. Other Approvals: Respondent shall be obligated to obtain whatever permits, easements, rights of entry, approvals or authorizations may be necessary in order to carry out its obligations under this Order. This Order shall not relieve the Respondent of the obligation to comply with any other laws, rules or regulations of the State of New York or any other governmental authority which are applicable to Respondent's activities, nor preclude or limit such enforcement action as may be authorized by law for any such violation.

XIV. Other Remedies: (a) 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) the Department's right to enforce, administratively or at law or in equity, the terms, provisions and conditions of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall be in breach of the provisions hereof; (3) the Department's right to bring any action, administratively or at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns which the Department could otherwise maintain with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of wastes from the site or from areas in the vicinity of the site, or to require that Respondent take such additional measures as may be necessary for the protection of public health or the environment, including interim remedial measures; (4) the Department's right to commence any action or proceeding relating to or arising out of any disposal of hazardous wastes at the site, as those wastes are defined by applicable regulation; or (5) the Respondent's right to challenge any such action by the Department, whether by administrative hearing or otherwise, to the extent otherwise permitted by law.

(b) This Order shall not be construed to prohibit the Commissioner or the Commissioner's duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XV. 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.

XVI. Force Majeure: Respondent shall not be in default of compliance with this Order to the extent that Respondent may be unable to comply with any provision of this Order because of the action of a national or local government body (other than the City of Middletown) or court, an act of God, war, strike, riot or catastrophe as to any of which the negligence or willful misconduct on the part of Respondent was not a proximate cause; provided, however, that Respondent shall use its best efforts to comply. Respondent shall provide notice to the Department in writing immediately upon obtaining knowledge of such event, and shall request an appropriate modification to this Order. Relief under this clause shall not be available to Respondent, with regard to a particular event, if Respondent fails to provide timely notice of such event. The Respondent shall have the burden of proving entitlement to relief under this clause, by clear and convincing evidence.

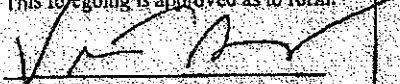
XVII. Modification: This Order may not be modified except in a writing executed by the DEC Commissioner or the DEC Commissioner's authorized representative.

XVIII. Default: 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, and may constitute sufficient grounds for revocation pursuant to 6 NYCRR 621.14 of any permit, license, certification or approval issued to the Respondent by the Department.

XIX. Entire Agreement: The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the violations set forth above. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing pursuant to Paragraph XVII hereof. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

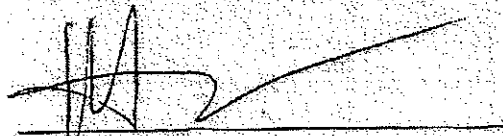
XX. Binding Effect: The provisions of this Order shall be deemed to bind the Respondent, its officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for it, including, without limitation, any subsequent operator of the Facility who may carry on activities now conducted by Respondent at the Facility, and any successor in title to the Facility or any interest therein. Respondent shall provide a copy of this Order (including any submissions incorporated herein) to any contractor or subcontractor hired to perform work required under this Order, and shall require compliance with this Order as a term of any contract for performance of work under this Order. Respondent shall nonetheless be responsible for ensuring that all work performed under this Order is in compliance with the terms of the Order.

XXI. Authority. The individual signatories to this Order represent that they have authority to bind the respective parties by execution of this Order.

This foregoing is approved as to form:

Vincent Altieri, Regional Attorney
Date: 10/4, 2004

Dated: New Paltz, New York
Oct 7, 2004

ERIN M. CROTTY, Commissioner
New York State
Department of Environmental Conservation


By: Marc Moran
Regional Director
Region 3

Schedule A

Schedule of Compliance for Order on Consent

Respondent: City of Middletown, Department of Public Works

Site or Facility: City of Middletown WWTP

WARNING: Respondent is required to self-certify timely completion of each of the activities required by this Schedule in accordance with Paragraph 1 of this Schedule.

1. Self-certification: Within 10 days after the passage of each of the milestone dates set forth in this Schedule of Compliance, Respondent shall submit to DEC a signed statement certifying that the work required was completed by that date, and that the work was done in the manner required by this Order. [if applicable, also require submission of whatever confirming documents may be relevant: as-built plans, purchase orders, receipts for disposal of waste, etc.]

Submission of the required certification shall be considered an affirmative representation by the Respondent of the truth of its contents. Any false statement made therein shall be punishable pursuant to Section 210.45 of the Penal Law, and as may be otherwise authorized by law.

Failure to submit a required certification by the due date shall be a violation of this Order, and shall establish a legal presumption that the Respondent has failed to comply with that requirement of the Schedule.

2. Remedial Activities and Milestones: Respondent shall timely perform the activities set forth below in a good and workmanlike manner and supply all required labor, equipment and materials at Respondent's own cost and expense:

Respondent's Obligations And Corrective Actions To be Taken

I. To address effluent violations:

A. Respondent shall complete rehabilitation of the Rapid Sand Filters.	September 1, 2004 ^{(1)*}
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B. Respondent shall submit an approvable Engineering Report and a schedule for completion of the work of Anaerobic Digesters	November 1, 2004
C. (1) Respondent shall submit approvable plans, specifications and engineering report describing the proposed Bio filter technology Treatment System and the plant expansion which must include a proposed construction schedule. (2) Respondent shall have obtained a DEC permit (and any other needed permits) for the expansion project.	August 1, 2005
D. Begin construction (award bids) for the sewage treatment plant upgrade/expansion	January 1, 2006
E. Respondent shall complete construction of the new wastewater treatment train including nitrification. Respondent shall submit a construction completion certification by a P.E. Engineer to the Regional Water Engineer within 3 weeks of completion.	April 1, 2009
F. Respondent shall meet all the current effluent limits in SPDES permit No. NY 0026328.	August 1, 2009

With regards to the work specified in B & E, Respondent shall submit quarterly updates on the progress of the work. This report shall identify the project and outline the status of construction.

***Tasks Accomplished**

II) To address inflow/ infiltration

A. Commence award bids for I/I reduction project in identified priority areas in the approved SSES report.	By June 1, 2004*
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<p>B. Respondent shall submit an approvable engineering report which quantifies flows from contributing communities and details proposed sewer collection system rehabilitation including a construction schedule.</p>	<p>By January 1, 2005</p>
<p>C. Respondent shall conduct smoke testing at Mt. Carmel Seminary and any other large private facilities connected to sewers. All illegal connections discovered must be corrected immediately via local code enforcement.</p>	<p>By March 1, 2005</p>
<p>D. Respondent shall evaluate post-construction wet weather flows at Monhagen, Sprague, and Sterling Streets and Wisner Avenue. Report findings. If any segments still surcharge during wet weather, submit a construction schedule to correct them.</p>	<p>By December 1, 2006</p>
<p>E. Respondent shall submit construction completion certification for the collection system repair work certified by a Professional Engineer to the Regional Water Engineer.</p>	<p>By June 1, 2007</p>

*Tasks Accomplished

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of this Order without further notice, waives its right to a hearing in this matter, and agrees to be bound by the terms, conditions and provisions of this Order.

City of Middletown, ~~Department of Public Works~~ ^{Mayor}
By: *John DeStefano*
Title: Mayor

ACKNOWLEDGMENT

On this 4th day of October, in the year 2004, before me, the undersigned, personally appeared Joseph M. DeStefano, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as shown in the instrument, and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Deborah A. Luskert
Notary Public

DEBORAH A. LUSKERT
Notary Public, State of New York
#01LU6020001
Residing in Orange County
Commission Exp. February 22, 2007

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Middletown WWTP

Order on Consent

SPDES No.: NY 0026328

During the period beginning with the execution of the attached Order on Consent and lasting until The ~~Discharges~~ facility shall be limited and monitored by the permittee as specified below.

OUTFALL No.	LIMITATIONS APPLY:	RECEIVING WATER
001	<input checked="" type="checkbox"/> All Year <input type="checkbox"/> Seasonal from _____ to _____	Wallkill River

PARAMETER	EFFLUENT LIMIT					MONITORING REQUIREMENTS	
	Type	Limit	Units	Limit	Units	Sample Frequency	Sample Type
Flow	30 day Arithmetic mean					Continuous	Recorder
UOD	30 day Average (summer)	45	mg/l	2245	lbs/d	1/week	
Solids, Suspended	30 day Average	36	mg/l	1800	lbs/d	2/week	
Solids, Suspended	7 day average	54	mg/l	2700	lbs/d	2/week	
Solids, Settleable	30 day Average	0.5	ml/l			3/day	
Nitrogen, Ammonia (as NH ₃)	30 day Average (Summer)	5.1	mg/l		lbs/d	2/week	
Nitrogen, Ammonia (as NH ₃)	30 day Average (Winter)	12.5	mg/l		lbs/d	2/week	
Effluent Disinfection required: <input type="checkbox"/> All Year <input checked="" type="checkbox"/> Seasonal from <u>May 15</u> to <u>Oct 15</u>							
Coliform, Fecal	30 day geometric mean	280	No./100 ml				
Coliform, Fecal	7 day geometric mean	560	No./100 ml				

FOOTNOTES: (1) Flow Monitor only

(2) Ultimate Oxygen Demand shall be computed as follows: $UOD = 1.5 \times CBOD_5 + 4.5 \times TKN$ (Total Kjeldahl Nitrogen)

(3) and effluent shall not exceed 85 % and 79 % of influent values for BOD₅ & TSS respectively. If raw water then TSS percent removal is monitor only.