

Order on Consent
DEC Case No. R3-20040308-27
Consent Order Modification

The New York State Department of Environmental Conservation ("DEC") has reviewed the City of Middletown's May 2, 2008 request for modification of the Order on Consent dated October 7, 2004, entered into by the City of Middletown with the Department regarding the upgrade and expansion of the City's sewage treatment plant.

Such Order on Consent, in particular Paragraph I of Schedule A, "Schedule of Compliance for Order on Consent," is hereby modified as follows:

- A. Remains unchanged.
- B. Remains unchanged.
- C. (1) By October 1, 2008, Respondent shall submit to the DEC, approvable plans, specifications and engineering reports describing the plant expansion, which must include a proposed construction schedule.
(2) By January 15, 2009, Respondent shall obtain Department approval of the Stormwater Pollution Prevention Plan and obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (SPDES GP-0-08-001) for the plant expansion.
- D. (1) By February 16, 2009, Respondent shall begin construction of the plant expansion to 8.5 MGD.
(2) By February 16, 2010, Respondent shall complete demolition and removal of existing trickling filters and commence installation of a new 2-meter belt filter press.
- E. By February 16, 2011, Respondent shall complete construction of the plant expansion to 8.5 MGD. Respondent shall submit a construction completion certification by a Professional Engineer, certified in the State of New York, to the DEC Regional Water Engineer within 3 weeks of completion.
- F. By August 1, 2011, Respondent shall meet all the current effluent limits in SPDES permit number NY 0026328.

Paragraph II of Schedule A, "Schedule of Compliance for Order on Consent," is hereby modified as follows:

- A. Remains unchanged.
- B. Remains unchanged.
- C. Remains unchanged.
- D. (1) By December 31, 2008, Respondent shall submit to the Department a project schedule for correcting surcharging sewer segments along Monhagen Brook, Sprague Avenue and Sterling Street.
(2) By April 1, 2009, Respondent shall submit to the Department approvable final design plans, as in accordance with 6 NYCRR 750-1.2(a)(8), for correcting surcharging sewer segments along Monhagen Brook, Sprague Avenue and Sterling Street.
(3) Respondent shall complete construction for correcting surcharging sewer segments along Monhagen Brook, Sprague Avenue and Sterling Street, within one year of the Department's approval of the final design plans.
- E. Upon completion of construction, Respondent shall submit construction completion certification for the collection system repair work, which shall be certified by a Professional Engineer, certified in the State of New York, to the DEC Regional Water Engineer.

All other terms and conditions of the October 7, 2004 Order on Consent, including the Interim Effluent Limitation and Monitoring Requirements, shall continue in full force and effect.

Respondent also agrees to pay \$6,500.00 (Six thousand, five hundred dollars and no/100), representing a portion of the suspended penalty described in the Order, which is hereby vacated, and is now due and payable upon execution of this modification of Consent Order by Respondent.

In the event that Respondent fails to strictly and timely comply with any provision of this Order, and the modified Schedule of Compliance, a stipulated penalty shall be due and payable within 10 (ten) business days of notice of noncompliance from the DEC, as follows:

PERIOD OF NONCOMPLIANCE PENALTY PER DAY

Violations occurring on the 1 st Day through 30 th Day:	\$1,000.00
Violations occurring on the 31 st Day through 60 th Day:	\$2,000.00
Violations occurring each day thereafter:	\$3,000.00

In the event that the DEC determines that the Respondent has violated any provision of this Order, the Department may serve upon Respondent a notice of noncompliance, which shall set

forth the nature of the violation(s) and the calculation of stipulated penalties due. Such notice shall be deemed part of this Order. Respondent shall deliver the full stipulated penalty amount to the DEC within 10 (ten) 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 in this Order, or the 2004 Consent Order. The payment of stipulated penalties as set forth above, shall also not limit the Department's right to seek other and further relief as may be authorized by law.

The City of Middletown hereby consents to the issuing and entering of the modification of the Order on Consent entered into by the City of Middletown on October 7, 2004, waives the right to notice and hearing, and agrees to be bound by the previous terms and conditions, and the terms and conditions contained herein, by execution hereof, by a person authorized by the City to do so.

City of Middletown

By: Marlinda Duncanson
Hon. Marlinda Duncanson
Mayor
Date: 10-8-09

Alexander B. Grannis
Commissioner
New York State Department of Environmental Conservation

By: William C. Janeway
William C. Janeway
Regional Director, Region 3
Date: 10/14/08

Approved as to form

John L. Parker
John L. Parker
Regional Attorney, Region 3
Date: 10-14-08