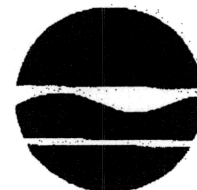


**New York State Department of Environmental Conservation****Office of General Counsel, Region 5**

1115 NYS Route 86, PO Box 296, Flay Brook, New York 12977

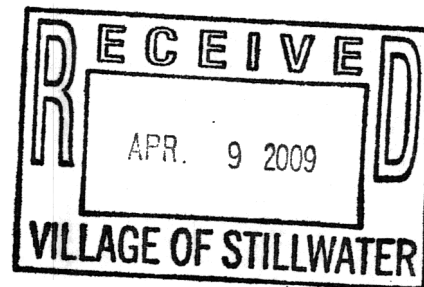
Phone: (518) 897-1227 · FAX: (518) 897-1394

Website: www.dec.ny.gov

Alexander B. Grannis
Commissioner

April 9, 2009

Ernest W. Martin
Mayor, Village of Stillwater
1 School Street
P.O. Box 507
Stillwater, New York 12170



**Re: Notice of Noncompliance with Order on Consent
Village of Stillwater
Case No. RS-20030722-362**

Dear Mayor Martin:

On March 18, 2008, the Village of Stillwater entered into an Order on Consent with the Department to address an illegal point source discharge from its water filtration plant. In addition, the Order also addresses ongoing problems with the Village's excessive inflow and infiltration problems in its wastewater collection system. A copy of that Order on Consent is enclosed.

Pursuant to paragraph V of this Order, this letter constitutes a "Notice of Noncompliance" advising the Village that it is in violation of several milestone dates in the Order. Pursuant to paragraph II of the Order, the Department demands \$227,000 in stipulated penalties for the Village's failure to terminate its illegal point source discharge by November 30, 2008. Furthermore, since the Village failed to submit a Final Engineering Report on its Wastewater System by June 30, 2008, the Village is required to pay the sum of \$531,000 in stipulated penalties. Thus, in total, the Village is required to remit the sum of \$758,000 to the Department by April 29, 2009.

A. Penalty Calculation for Illegal Point Source at Water Filtration Plant

Under Schedule "A", Item No. 6 of the Order on Consent, the Village was required to close the illegal point source discharge from the water filtration plant by November 30, 2008 and use a newly constructed wastewater line. This closure has not occurred. Under the stipulated penalties provision of the Order, the Village is liable for \$5,000 in penalties from December 1-10, 2008. In addition, the Village is liable for \$20,000 from December 11-30, 2008. Lastly, since December 31, 2008 until April 9, 2009, a period of 101 days, the Village is liable for \$202,000. In total, the Village is legally obligated to pay the sum of \$227,000 in stipulated penalties for its 130 days of violating this particular provision of the Order on Consent. In

calculating this sum, the Department has not included the violation of Item Nos. 3, 4, and 5 of the Order's Schedule "A." If the Department had imposed stipulated penalties for these particular milestone violations, which it is legally authorized to do, the stipulated penalty amounts for this project would have been considerably higher.

B. Penalty Calculation for Failure to Submit Final Engineering Plan or Commitment Letter from Saratoga County

The Village did not submit an approvable Final Engineering Report nor the Saratoga County commitment letter by the June 30, 2008 deadline. Furthermore, to date, the Village has not submitted an acceptable Final Engineering Report to the Department. As of the date of this letter, 283 days have passed since this June 30, 2008 deadline.

Under the stipulated penalties provision of the Order, the Village is liable for \$5,000 in stipulated penalties from July 1-10, 2008. In addition, the Village is liable for \$20,000 from July 11-30, 2008. Lastly from July 31, 2008, until April 9, 2009, a period of 253 days, the Village is liable for \$506,000 in stipulated penalties. In total, the Village is legally obligated to pay the sum of \$531,000 for this particular violation of the Order on Consent. In calculating this sum, the Department has not included the violation of Item Nos. 3 and 4 of the Order's Schedule "B." If the Department had imposed stipulated penalties for these milestone violations, which it is legally authorized to do, the stipulated penalty amount for this project would have been significantly higher.

C. The Continuing Accumulation of Stipulated Penalties

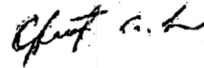
Please be advised that these stipulated penalty amounts are accumulating on a daily basis and, if the Village does not comply with the requirements of this Order soon, these penalty amounts will continue to accumulate at a cost of \$4,000 per day.

In addition, it is imperative that the Village submit the final Engineering Plan for its wastewater collection system. This plan must include all of the items set forth in Item No. 1 of Schedule "B" of the Order. In addition, the Village must start the process of having sump pumps, roof leaders and footing drains disconnected from the Village's wastewater collection system. Each of these is a source of illegal stormwater or groundwater discharges to your wastewater collection system which causes the flow in your system to exceed its permitted limit of 252,000 gallons per day. As part of this Order, the Department agreed to provide an interim flow limit (30-day average) of 649,000 gallons per day. Without this interim flow limit, the Village would have had a significant number of flow limit violations of its SPDES permit resulting in the accumulation of additional stipulated penalties under paragraph II. B of this Order. That has not occurred because of the Department's willingness to provide the Village this interim flow limit during the period of time necessary for the Village to correct its inflow and infiltration limit.

While the Department recognizes the severity of this \$758,000 penalty, the fact remains that this stipulated penalty amount could be higher and will increase if the Village does not begin complying with this Order on Consent.

In closing, the Department requires the payment of a \$758,000 penalty by April 29, 2009. Furthermore, the Department also wants to remind the Village of the procedural provisions of this Notice of Noncompliance which are set forth in paragraphs V and VI of the Order on Consent.

Sincerely,



Christopher Lacombe
Regional Attorney-Region 5

CAL/bev
enc.

cc: Scott Crisafulli
William Wasilauski
Al Matrose
Rob Streeter
Joe Kowalczyk, AAG
James Peluso, Esq., Village Attorney