

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of  
Article 17 of the Environmental Conservation  
Law of the State of New York ("ECL") by:

**ORDER ON  
CONSENT**

**Case No.  
R5-20090615-895**

**Village of Saranac Lake,**

Respondent.

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WHEREAS:

1. The New York State Department of Environmental Conservation ("DEC" or "Department") is responsible for the enforcement of the Environmental Conservation Law ("ECL"), and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), and any orders or permits issued pursuant thereto. It is also the responsibility of the Department to conserve, improve and protect New York State's natural resources and environment, and control water, land and air pollution in order to enhance the health, safety and welfare of the people of the State of New York and their overall social and economic well-being; and

2. Respondent, **Village of Saranac Lake**, with its municipal office located at 3 Main Street, Saranac Lake, New York, maintains a sand and salt pile located on Van Buren Street and operated by Respondent's Department of Public Works. The sand/salt pile is located within the immediate drainage area of Lake Colby, which is a Class A(T) water of the state. Furthermore, this sand/salt pile is adjacent to a drainage ditch that empties directly to Colby Brook, an unclassified tributary of Lake Colby; and

3. Section 17-0501 of the ECL states that it shall be unlawful for any person, as defined by ECL §17-0105(1), directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301; and

4. During Spring 2009, Department staff inspected the sand/salt pile and observed that a mixture of sand and salt from this sand/salt pile had migrated past the silt fence and down the slope to the drainage ditch into the water.

5. Respondent=s discharges from the sand/salt pile to surface water violated water quality standards for deposition of settleable solids into surface waters in violation of ECL §17-0501(1) and 6 NYCRR §703 *et seq.*; and

6. In settlement of Respondent’s civil liability for the aforesaid violations, Respondent has waived its right to a hearing herein as provided by law and has consented to the issuing and entering of the Order on Consent pursuant to the provisions of Article 17 of the ECL, and has agreed to be bound by the provisions, terms and conditions herein.

7. Department and Respondent agree to provide to the Adirondack Council documents, copies of correspondence, test results, and other related material concerning the matter of this Order, if such documents, copies of correspondence, test results and other related material are actually in the respective possession of either the Department or Respondent and are not otherwise privileged.

NOW, being duly advised and having considered this matter, THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HEREBY ORDERS THAT:

I. CIVIL PENALTY

- A. Respondent is assessed a civil penalty in the amount of **FIVE THOUSAND DOLLARS (\$5,000)**. Respondent shall pay to the Commissioner the sum of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)**. The additional sum of **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500)** shall remain suspended so long as Respondent complies with the terms and conditions of this Order, including Schedule “A” which is attached hereto and incorporated herein;
- B. Respondent shall submit such payment as required by this Order, within thirty (30) days of receipt by the Respondent of a fully-signed Order, to the Regional Director of the New York State Department of Environmental

Conservation, Region 5, 1115 NYS Route 86, P.O. Box 296, Ray Brook,  
New York 12977.

## II. MODIFICATION

If Respondent desires that any of the provisions, terms or conditions of this Order be changed, it shall make written application, setting forth the grounds for the relief sought, to the Regional Director, Region 5, New York State Department of Environmental Conservation, Region 5, Route 86, P.O. Box 296, Ray Brook, New York 12977 and such changes shall not become effective except as specifically set forth by written order of the Regional Director.

## III. ENFORCEMENT

The failure of Respondent to comply with any provisions of this Order constitutes a “default and a failure to perform an obligation under this Order” and shall be deemed to be a violation of both this Order and the ECL.

## IV. INDEMNIFY AND HOLD HARMLESS

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 brought, claimed or sought by a third party and arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, its trustee, officers, employees, agents, successors or assigns. The indemnification obligation does not extend to any claims, suits, actions, damages or costs to the extent attributable to grossly negligent, intentional, reckless, or unlawful acts of DEC or the State.

## V. ENTIRE ORDER

The provisions of this Order constitute the complete and entire Order issued to Respondent concerning resolution of the specific statutory, regulatory and permit violations identified in this Order. 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.

## VI. RESERVATION OF RIGHTS

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 Department may have against Respondent with respect to investigatory, remedial or corrective action or with respect to claims for natural resources damages as a result of any and all activities conducted at the facility or areas in the vicinity of the facility;
- B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its officers, trustees, agents, servants, employees, successors and assigns;
- C. The Department's right, to the extent provided by law, to enforce this Order against Respondent, its officers, trustees, agents, servants, employees, successors or assigns in the event that Respondent fails to fulfill any of the terms or provisions hereof; and
- D. Except as otherwise provided in this Order, any legal or equitable rights or claims, actions, proceedings, suits, cause of action or demands whatsoever that the Department may have against Respondent for any alleged violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder.

## VII. BINDING EFFECT

The provisions, terms and conditions of this Order shall be binding on the parties, their successors and assigns.

VIII. EFFECTIVE DATE

The effective date of this Order is the date it is signed by the Commissioner or his/her designee.

DATED: Ray Brook, New York  
\_\_\_\_\_, 2009

ALEXANDER B. GRANNIS,  
Commissioner  
New York State Department of  
Environmental Conservation

By: \_\_\_\_\_  
Elizabeth M. Lowe  
Regional Director - Region 5

CONSENT BY RESPONDENT

Respondents hereby consents to the issuing and entering of this Order without further notice, waives their right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

VILLAGE OF SARANAC LAKE, Respondent

By: \_\_\_\_\_  
Title: Village Manager  
Date: 7/7/09

ACKNOWLEDGMENT

STATE OF NEW YORK )

) ss:

COUNTY OF FRANKLIN )

On the 8<sup>th</sup> day of July in the year 2009 before me personally came Martin Murphy to me known, who, being by me duly sworn, did depose and say that s/he resides in Saranac Lake, County of Franklin, NY; that he is the Village Manager of Village of Saranac Lake, the municipal corporation described in and which executed the foregoing instrument, and he signed his name as authorized by said municipal corporation.



Notary Public

**Charles J. Noth**  
**Notary Public, State of New York**  
**02NO6108046**  
**Qualified in Franklin County**  
**My Commission Expires April 12, 2012**

**SCHEDULE A  
SCHEDULE OF COMPLIANCE  
For  
Village of Saranac Lake  
Case No. R5-20090615-895**

1. By **August 1, 2009**, Respondent shall seek coverage under the Department's SPDES Multi-Sector General Permit for Stormwater Discharges Associated With Industrial Activity, GP-0-06-002 for its municipal facility, including its sand/salt storage area located at Van Buren Street.
2. By **October 30, 2009**, Respondent shall advise the Department in writing of Respondent's commitment to pursue one of the following courses of action:
  - Respondent will construct a sand/salt shed by the deadline contained in this Order; or
  - Rather than construct a sand/salt shed, Respondent shall construct an appropriate containment device for storing the sand and salt at its Van Buren Street facility; or
  - By **August 1, 2010**, Respondent shall permanently remove all sand and salt from its Van Buren Street facility.
3. By **May 1, 2010** Respondent shall commence construction of a shed or containment device.
4. By **August 1, 2010** Respondent shall complete construction of a shed or containment device.
5. In the event Respondent does not comply with any of the above-referenced deadlines, Respondent shall remove all sand and salt from its Van Buren Street facility no later than ninety (90) days after receiving written notice from the Department.