

6 Mid Oaks Street  
Monroe, NY 10950

Monday, April 28, 2014

NYSDEC Region 3  
Dept. of Environment Conservation  
21 S. Putt Corners Rd.  
New Paltz, NY 12561

In Re: SEQR Annexation Case – Town of Monroe v. Village of Kiryas Joel

To the Commission:

Good Day,

I am a citizen of the Village of Monroe, an incorporated portion of the Town of Monroe, and have been a resident for nearly nine (9) years. While like many others we have concerns about the proposed annexation of land into the Village of Kiryas Joel, I appreciate this opportunity to provide comment to the Commission on the following points:

- I. The capability of both the Town and Village to make a fair recommendation that considers the long-term ramifications of this annexation.
- II. The lack of representation currently afforded to the residents in the Town of Monroe as well as surrounding communities to raise public comment with the Town during open public comment periods, as well as the lack of interest by the Town Supervisor and his board to provide transparency.
- III. The track record of the Village of Kiryas Joel in all matters legal, as well as adherence to past legal requirements.
- IV. The impacts to the local, region and state of the action under consideration
- V. Broadness of powers to investigate the impacts of this action in a transparent and unbiased manner.
- VI. The capability of the two lead agency candidates to reach a conclusion that considers the economic, environmental, and regional impact of the decision (education, social programs, taxation, etc.), which have statewide ramifications.

Issue I: The ability of either party to render a fair recommendation that considers the long-term ramifications. The Commission may not be aware that the recent election in the Town of Monroe is the continued subject of scrutiny based upon major voting irregularities. Among those:

- Inadequate ballots available to service the voting demand in the Town of Monroe outside of the Village of Kiryas Joel. Kiryas Joel had 102% of the ballots necessary for its entire registered voter roll to cast a ballot. That was compared to those provided to the Town outside Kiryas Joel, where that ratio was approximately 60%.
- The disparity in voting between Kiryas Joel and non Kiryas Joel residents. 99% of Kiryas Joel residents voted in bloc in favor of the currently elected administration, whereas 97% of the votes cast outside Kiryas Joel favored other candidates.
- Electioneering and poll-watcher intimidation within Kiryas Joel's polling places. There were several violations witnessed on election day of the electioneering laws, including the current town supervisor, Harley Doles III, being inside of the place of voting outside of the purpose of casting a vote and far outside his home voting district.

These issues have been raised to the county level and are currently being raised to the Federal Level for investigation into voting irregularity. Given the relationship between the seated Town Supervisor and the leadership of the Village, it is not clear that an impartial opinion could not be rendered.

Issue II: Lack of representation afforded to Town residents/Lack of transparency. The Town has had a recent history under Mr. Doles' presence as a board member and now supervisor of Town of Monroe. Meetings have been contentious for a significant period, have often digressed into shout-downs and cat-calling, and are questionable in their adherence to the State Open Meetings Law. Meeting minutes are never issued or posted in accordance with Section 103 of the State Open Meetings Law. Often, requests are made of the cable provider to shut down recording or transmission of meetings. The concerns of the public are not accommodated, and there is no opportunity to submit items "off-agenda" – meaning that the Town Supervisor determines and decides the agenda of the meeting and in so doing uses this to suppress comment or requests that concerns or grievances be aired.

In this type of an environment, the concerns of the residents of both the Villages of Monroe and Harriman, as well as the unincorporated Town, do not have an opportunity to be heard or included in discussion, and no further consideration is entertained. This leaves the taxpayers without adequate representation, and raises significant concerns about the Town's ability to act as a Lead Agency in the SEQR process. Please also reference Attachment A in this document.

As a result, I've included this as part of the public comment to ensure this oversight and issue has been documented and duly considered by the Commission.

Additionally, while budget issues may be addressed during meetings, many budget line items are not fully transparent, and major expenses being incurred by the town do not receive due diligence. As examples:

- The Town is under litigation for their purchase of a movie theater for \$880,000 of taxpayer funds. No notice was given to the residents on the purchase, nor has any transparency in the decision-making leading to their intended use of the property.
- The Town has applied and received approval to open the building despite legal injunction for the express purpose of staffing security for the use of public toilet facilities at a cost of \$3,000/month. At no time were alternatives explored that considered other options, many of which were either less expensive or could provide a lower cost of operation.

The second example demonstrates the unwillingness of the Town to consider alternatives that do not serve their specific objectives, as well as remove the oversight that would be inherent in a typical RFP Process. Given these examples, it is unclear that the Town has employed sound fiscal and planning practices and/or would have the required level of competency to undertake Lead Agency status of such a magnitude.

As to the Village of Kiryas Joel's record of transparency and public visibility, these have been outlined in prior correspondence and have not operated in a manner compliant with the guidance provided by the Open Meetings Law.

Issue III: Kiryas Joel legal track record. Kiryas Joel appears to operate in a manner that is "beyond reproach" when it comes to all matters legal, including action brought against it for the following:

- Segregation of a Public Park, funded by taxpayer dollars, in violation of civil rights and church/state separation laws. (Recently settled conditionally).
- Action taken by Kiryas Joel against the neighboring Town/Village of Woodbury with regard to Woodbury's zoning regulations. (Matter still in litigation).
- Various DEP actions cited against Kiryas Joel. (Please reference the April 4 correspondence from Zarin & Steinmetz on behalf of United Monroe for details on the appellate court rulings and actions that remain unresolved subsequent to those rulings)
- Catskills Aqueduct Pipeline. (ibid)

To name a few. Kiryas Joel has also been involved in actions before this commission, and I urge the Commission to review this carefully in considering their own competency for making a decision that is in the best interest of its neighbors. In cases such as the Catskills Pipeline project, those decisions were not in the interest of neighboring communities and had proven disruptive. Kiryas Joel's track record is

to decide only in its own self-interest, irrespective of the consequences to its neighbors.

#### Issue IV: Local/Regional/State/Multi-state impact.

This deserves special consideration. There are several impacts that have been raised but merit concern:

- I. Means to self-support. As has been previously documented, Kiryas Joel is the largest recipient of social services in Orange County. It also holds the title of “Poorest City in America”<sup>1</sup> In fact, Kiryas Joel receives more public aid (in forms such as food stamps, health care, et al) than all other municipalities in Orange County combined. 70% of the residency of the Village lives below the poverty line. Expanding this is no small consideration, and potentially has an impact to swell the demand for social services at a pace that neither the county nor state are in the fiscal position can support. Based on Orange County’s own budget projections, there is a potential deficit of \$10,000,000 in the upcoming budget year. Given the state-mandated property tax cap, that revenue will need to be otherwise developed.
- II. Traffic Impact. The roads surrounding Kiryas Joel are at or nearing capacity with thoroughfares entering and leaving the village limited to one-directional travel lane and limited traffic flow metering (signals). Based on the development plans being discussed, the addition of more multi-story/multi-family housing to an area that is currently zoned as “Rural-Residential” has the potential to increase population density by 200% or more at full build out. That will increase traffic, congestion, and pressure on the artery system in the Monroe/Woodbury/Blooming Grove corridor. This will also have a marked impact on air quality.
- III. Water/Waste Treatment/Environmental. The current Kiryas Joel waste treatment operation is not in compliance with the State Pollutant Discharge Elimination System based on your Commission’s observations recorded in a May 16, 2013 letter to Kiryas Joel’s mayor and trustees. Couple this with the current state of capacity of the Harriman Waste Treatment facility and the additional demands of an increasing population. These factors alone will push the current infrastructure past capacity, and the untreated effluent seepage into the Ramapo Watershed will have a serious impact on the region downstream into both Rockland County and Bergen County, New Jersey, making this impact one of multiple state involvement. Any decisions made should consider the input of the New Jersey Department of Environmental Protection. Based on Kiryas Joel’s serial record of non-compliance, transparency from the village to multiple jurisdictions potentially impacted is unlikely.

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<sup>1</sup> NY Times 4/21/2011, <http://www.nytimes.com/2011/04/21/nyregion/kiryas-joel-a-village-with-the-numbers-not-the-image-of-the-poorest-place.html?pagewanted=all&r=0>

- IV. School District. There are concerns that the current Monroe-Woodbury school district (MWSD) in which the annexed land is located would not be able to handle the impact of this quantity of additional students, warranting either the removal of Kiryas Joel annexed land from MWSD, but also the increased subsidy to the current Kiryas Joel school district where their special-needs children are currently enrolled. Since most residents of Kiryas Joel enroll their children in private Yeshiva, they likely would not utilize MWSD's services (and should therefore be part of their separate district), or the populated presence in MWSD's district would not necessarily have the best interest of the neighboring district's parents and children at heart. Whichever the case, this creates a serious impact.
- V. Neighboring municipality impact. Orange County has a uniquely rural character at its heart. The surrounding communities have come to cherish the open space, lack of suburban/urban sprawl, and the surrounding natural environment, all of which form reasons that I and others have chosen to locate our families here. The introduction of a densely populated urban area into the environment doesn't fit with the surroundings, and infringes on the lifestyle cherished by the neighboring communities. While we appreciate the unique way of life of the Satmar Hasidim, the principle of "being a good neighbor" does not seem to be mutually shared.

These are several of the impacts at a broader level. In short, creating a high-density, sub-poverty-level community in this area is not an impact that the region can afford as a decision. However, we have little confidence that either candidate for lead agency can consider that in the SEQR process.

Issue V: Investigative power. As has been stated before, neither entity has demonstrated their ability to operate in a fair, unbiased, and transparent manner with consideration for all of the factors in such a complex decision. The Town of Monroe for its behavior, including the role complicit with the Orange Board of Elections to deny the voters of non-Kiryas Joel Monroe due representation; the Village of Kiryas Joel for their serial disregard for any law with which they do not wish to comply and their own lack of transparency.

Neither bodes well for a well-structured and complete SEQR process, and your own Commission has a well-documented history with the compliance issues of Kiryas Joel to even basic mandates.

Issue VI: Conclusion that considers impact. As set forth in the assertions identified in Issue IV, as well as the track record of both entities outlined in the previous passages, I have little confidence that either entity could render a decision that is impartial based on the following grounds:

- A. The current Town Board of Monroe was elected entirely by a bloc vote from Kiryas Joel. In fact, the candidates prevailing made no attempt at outreach to

the remainder of residents in the Town of Monroe, and agreed under duress to only one Webcast debate. It is safe to say that the Town Board is acting purely in the interest of the constituency that elected it, this being the voters of Kiryas Joel.

- B. Kiryas Joel's own record is purely one of self-interest, regardless of that impact to the town or its neighbors. While it has the right to make its own decisions, it does so with relative impunity and relies on the taxpayers of the county and state to fund those decisions. Case-in-point in Issue IV-I, the amount it receives in social service funding compared to the rest of the county is higher both in number (by several hundred as of 2010, the last year numbers were available), and by percentage of residents (70% versus just 10% county-wide).
- C. It should be assumed from A & B that the two entities will act with benefit to one another, since it is in the interest of the Town of Monroe leadership to both expand its supporting population and court that constituency.

Summary: In closure, I'd like to thank the Commission for its consideration of these points, and hope that it understands the concerns raised by this document on behalf of a community that lacks the appropriate representation. It is our hope that the Commission carefully reviews the information before it and renders a decision to consider alternative representation to the two parties normally favored, or assumes the role of Lead Agency on its own in the absence of a clear, unbiased, and competency party to fill that role.

As to the other concerns raised in this document related to the allegations of abuse and fraud, it is my personal intent to raise these to the appropriate authorities for an objective and thorough investigation.

Over 6,000 people in the Town of Monroe turned out to vote because they are concerned about their community and the impact of the Town's actions. We care about our town and hope that the DEC shares the same concern for the impact of their decision by carefully weighing the evidence. I represent only myself, but I speak for many more who have marched, protested, raised awareness, and sat through Town Board meetings in which they were abused and ridiculed because they also care.

I urge the commission to select another lead agency as within its power.

Respectfully submitted,

Donald Andrew Buck

Attachments:

Statement: Allegro FOIL requests to Kiryas Joel

EPA Compliance Order to Kiryas Joel

Zarin & Steinmetz Letter to DEC  
SPDES Order to Kiryas Joel

Attachment A: John Allegro Statement on Monroe Town Board Meeting, April 7, 2014 (Printed in The Photo News, used here with credit to Strauss Newspapers, all rights reserved)

To the Editor:

If there is any question why the last Monroe Town Board meeting broke into spontaneous protest during the public comment session, allow me to offer a very simple answer. Supervisor Harley Doles stopped the meeting.

Mr. Doles is an expert at stopping meetings. Every time somebody says something he doesn't like, he stops his meeting and makes us wait, hoping that we will go away.

The way Mr. Doles acts at meetings says a lot about what he thinks of us, and what he wants us to do. He thinks that we shouldn't be heard. He wants us to stop. He wants us to go away.

There is a proposed annexation of 507 acres from Monroe into Kiryas Joel. The people voice valid concerns about the environmental, social, and economic impacts of such an action during Town meetings. Here's how the Supervisor responds:

- Mr. Doles limits public comment only to "agenda driven" topics. He doesn't want us to be heard.
- The Supervisor drags Town meetings long into the night, reading reports word-for-word. He wants us to go away.
- Supervisor Doles writes letters to New York State officials, asking them to step in and "oversee" the annexation process. He does this because he wants us to think that it's really not up to him and his board to vote "No" on this annexation. He wants us to stop.
- In a News 12 interview on Tuesday, Mr. Doles said that we should "step down and let the (annexation process) unfold the way it is supposed to." Again, he wants us to go away.

Mr. Doles and his board show us at every meeting that they do not represent all of the people of Monroe. They abuse the power of elected office to control our speech and intimidate us. They manipulate information about the annexation to make us think that it will have little or no effect on our community. We aren't buying it. Our voices will not be shut down by this board's antics. We will not go away.

Mr. Doles clearly created the atmosphere that led to the interruption of Monday night's meeting. He must stop this. The people are fed up with his continued efforts to silence and control us. It's on Mr. Doles to do his part by allowing us a fair voice in our Town government if he wishes to remain in office.

John Allegro  
Chairman, United Monroe Anti-Annexation Committee



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△ ALSO ADMITTED IN NJ

April 4, 2014

MARSHA RUBIN GOLDSTEIN  
HELEN COLLIER MAUCH<sup>△</sup>  
LISA F. SMITH<sup>°</sup>  
OF COUNSEL

**By Overnight Delivery**

Robert L. Ewing  
Environmental Analyst II  
New York State Department of Environmental Conservation  
Division of Environmental Permits, 4<sup>th</sup> Floor  
625 Broadway  
Albany, NY 12233-1750

Re: Lead Agency Dispute  
Proposed Ca. 510 Acre Land Annexation from  
Town of Monroe to Village of Kiryas Joel  
Town of Monroe, Orange County

Dear Mr. Ewing:

This Firm represents United Monroe, which consists of residents of the Town of Monroe and others who live in the surrounding community. United Monroe respectfully submits this letter to alert the Department to matters that raise serious doubts about the ability of the Village of Kiryas Joel ("Village") to investigate the impacts of the proposed annexation, and its capabilities for providing the most thorough environmental assessment of the proposed annexation. See 6 N.Y.C.R.R. § 617.6(b)(5)(v). Also, serious concerns exist regarding the Village's willingness and ability to undertake an open and transparent process, which encourages meaningful public participation, as the State Environmental Quality Review Act ("SEQRA") requires.

**Environmental Concerns**

The Village has exhibited repeated failures to fulfill its obligations under SEQRA and other environmental laws, which raise serious concerns about its willingness and ability to conduct a lawful and thorough environmental review in connection with the annexation.

The Appellate Division Second Department, for example, held that the Village Board of Trustees prepared an inadequate environmental impact statement (“EIS”) in connection with its review of a project to construct a public water supply facility and a pipeline to connect the facility to the Catskill Aqueduct. County of Orange v. Vill. of Kiryas Joel, 44 A.D.3d 765, 844 N.Y.S.2d 57, 61-62 (2d Dept. 2007). The Court held that the Village

- Did not “fully identif[y] the nature and extent of all of the wetlands that would be disturbed or affected by the construction of the proposed water pipeline, how those wetlands would be disturbed, and how such disturbance, if any, would affect the salutary flood control, pollution absorption, groundwater recharge, and habitat functions of those wetlands;”

- “[N]either the DEIS nor the FEIS fully identified the location, nature, or extent of the bodies of surface water into which wastewater from the proposed treatment plant would be discharged, and which State classes and standards of quality and purity apply to those water bodies;”

- “Nor did the DEIS or the FEIS adequately identify how much effluent would be discharged into those bodies of water over what periods of time, what the nature of the effluent might be, and what the effect upon those bodies of water are likely to be;”

- “[T]he DEIS and the FEIS were [also] rendered inadequate by the absence of a site-specific and design-specific phase 1–B archaeological study,” and;

- “[T]he DEIS and the FEIS provided no demographic analysis or projections with respect to the effect of the availability of a steady and stable supply of potable water on population movement into or out of the Village.”

Id. For these reasons, the Second Department held that the Village Board of Trustees failed to take the requisite “hard look” under SEQRA.

Moreover, once the Kiryas Joel Wastewater Treatment Plant was constructed and operational, your Department found that it was not in compliance with the State Pollutant Discharge Elimination System (“SPDES”) Permit and Article 17 of the Environmental Conservation Law. By letter dated May 16, 2013, for example, your Department issued a Notice of Violation to the Village Mayor and Trustees. The findings in this letter reflect a serial disregard for environmental conditions. By way of example, the letter notes that the Department had previously noted that certain improvements were required at the Plant to prevent rags and other solids from entering the system, and that the Department had previously required that these improvements be completed by March 1, 2008. More than five (5) years later, however, as of the date of the letter, these improvements still had not been effectuated.

Similarly, by letter dated December 23, 2013, your Department issued a Notice of Violation in connection with the Village's Municipal Separate Storm Water System ("MS4"). The Department noted that an inspection revealed that site disturbance greater than one acre had occurred without compliance with the Department's SPDES General Permit for Stormwater Discharges from Groundwater Activity.

By letter dated November 22, 2013, the United State Environmental Protection Agency ("EPA") also found that "the Village has violated and remains in a state of noncompliance with [Clean Water Act] Section 301, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations of the MS4General Permit. (Copy of EPA's November 22, 2013 letter and the accompanying Administrative Compliance Order (the "ACO") are annexed hereto.) The factual findings in the ACO demonstrate that the Village failed to fulfill fundamental requirements, such as failing to map its storm sewersheds, failing to implement and enforce requirements pertaining to obtaining Construction General Permit ("CGP") coverage, a lack of any procedures for Stormwater Prevention Plan ("SWPP") review, inaccurate records in a variety of areas, and a lack of a training program to ensure that staff receive necessary training.

These repeated and serious violations of environmental laws raise legitimate concerns about the Village's abilities to comprehensively investigate the impacts of the proposed annexation, and to provide an impartial, meaningful environmental assessment of the proposed annexation.

### **Public Participation Concerns**

The ACO also shows that the Village disregarded legal requirements intended to promote public participation, stating that the Village violated its obligation to make its draft Annual Report available to the public for comment. (ACO at 3.). Similarly, as set forth in the annexed letter of John Allegro, the Village has not been responsive to Freedom of Information Law ("FOIL") requests from the public for basic information. Moreover, the Village does not appear to conduct the meetings of its public bodies in a manner designed to promote public participation. As Allegro notes, the Village Planning Board meetings are scheduled for the unusual time of the first Sunday of every month at 9:00 p.m. Moreover, when Allegro went to the location noticed for the Planning Board Meeting at the scheduled time, the doors to the Village offices were locked, and there was no notice of a meeting change or cancellation was posted at the entrance of the building.

The Village's failure to fulfill its obligations to conduct official business in an open and transparent manner raises concerns about its ability to conduct a legitimate SEQRA review, which is intended to be an open process and one that promotes public involvement.

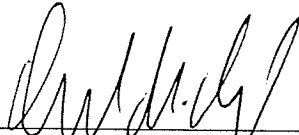
**Conclusion**

The Village's repeated and serious violations of environmental laws, and its apparent disinclination to involve the public in the public review process or otherwise conduct its affairs in an open and transparent manner, raise legitimate concerns about the Village's abilities to comprehensively investigate the impacts of the proposed annexation and to provide the most thorough environmental assessment of the proposed annexation.

Please let us know if you have any questions.

Respectfully,

ZARIN & STEINMETZ

By:   
Daniel M. Richmond

DMR/mth

enc.

cc: United Monroe  
Joe Martens, Commissioner  
Lawrence H. Weintraub, NYS DEC Office of General Counsel

John Allegro  
288 Seven Springs Mountain Road  
Monroe, NY 10950

April 2, 2014

Robert L. Ewing  
Environmental Analyst II  
New York State Department of Environmental Conservation  
Division of Environmental Permits, 4<sup>th</sup> Floor  
625 Broadway  
Albany, NY 12233-1750

Re: Lead Agency Dispute  
Proposed Land Annexation from  
Town of Monroe to Village of Kiryas Joel  
Town of Monroe, Orange County

Dear Mr. Ewing:

I respectfully submit this letter to advise the Department of certain facts that should be relevant to the Commissioner's Lead Agency determination. In particular, I would like to point out various facts and circumstances that raise questions about the Village of Kiryas Joel's willingness and ability to have an open and transparent review process that promotes public participation, as SEQRA requires.

A. The Village Has Not Been Responsive To My FOIL Requests: On February 12, 2014, I entered the Kiryas Joel Village offices, at 51 Forest Rd. Floor 3, at about 12:30 pm. The purpose of my visit was to deliver a request for copies of documents under the Freedom of Information Law. My request was formatted based on a template provided on the NY State Committee on Open Government website, submitted in writing, signed, and hand delivered to a woman behind the front counter. It was directed to the attention of Kiryas Joel Village Administrator Gedalye Szegedin, as I was instructed to do during a visit to the Village office on February 11. I was seeking the following basic information:

1. Names of the Village Board members
2. Names of Village Planning Board members
3. Names of Zoning Board of Appeals members
4. Location and scheduled dates of Zoning Board of Appeals meetings
5. Location and scheduled dates of Planning Board meetings
6. Minutes from all Planning Board meetings held from July 2012 through February 2014
7. Minutes from all Zoning Board of Appeals meetings held from July 2012 through February 2014
8. Minutes from all Village Board meetings held from July 2012 through February 2014
9. List of all Village employees, including: Name, Title, Job Description, Salary

I have received no communications from any Kiryas Joel Village employee in response to this request.

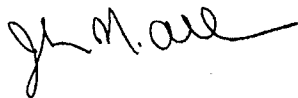
On March 5, 2014, I visited the Kiryas Joel Village offices to submit another request for information under the Freedom of Information Law. My request was formatted in the same manner as the request that was submitted on February 12, 2014, and was directed to the attention of Gedalye Szegedin, the Village Administrator. The request that I brought to the Village on this date was for copies of documents relevant to a petition to annex 507 acres from the Town of Monroe into the Village of Kiryas Joel, specifically; signed copies of a restrictive covenant and easement between Kiryas Joel and owners of properties that are listed on the annexation petition.

In this instance, the Village employee brought my request to the office of Mr. Gruber. She came back without any form of receipt. I asked that she generate a photocopy of the document and either stamp or initial and date it. She went back into Mr. Gruber's office, and returned with my original request. She told me that Mr. Gruber would not provide any form of receipt of the document. I asked several times, and was repeatedly told that I can "take it (the FOIL request) back." This Village employee made great efforts to place the document in my hand, to the point that I had to back away and tell her that I did not want it back. I left without any record that my document was received, other than the audio recording that I made of my visit.

I have received no communications from any Kiryas Joel Village employee in response to this request.

B. Lack of Open Meetings: On February 28, 2014 at 12:30 p.m., I called the Village offices of Kiryas Joel. My purpose was to confirm the location and time of the Village Planning Board meeting for March 2014. I found information on the Orange County, NY website stating that Village Planning Board meetings are held on the first Sunday of every month at 9:00 p.m. (<http://www.orangecountygov.com/content/124/1362/1460/10182/10928/default.aspx>) I spoke with a Village staff member who confirmed that the information I obtained was correct, but that I needed to confirm with the building department. I left a voice message with the building department immediately after this conversation. My call was never returned. On Sunday March 2, 2014, I went to the notice location for the meeting, 51 Forest Road, at 9:00 p.m. with the intention of attending the scheduled Planning Board meeting. The doors to the Village offices were locked. No notice of a meeting change or cancellation was posted at the entrance of the building.

Respectfully Submitted,



John N. Allegro



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

NOV 22 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5967 6837**

Ms. Gedalye Szegedin, Village Administrator  
The Village of Kiryas Joel  
PO Box 566  
Monroe, New York 10949

Re: **Administrative Docket No. CWA-02-2014-3014**  
Village of Kiryas Joel MS4, SPDES Permit No. NYR20A496  
Clean Water Act Information Request and Administrative Compliance Order

Dear Administrator Szegedin:


Please find enclosed a combined Information Request and Administrative Compliance Order (together, the "Order"), which the United States Environmental Protection Agency ("EPA") Region 2 is issuing to the Village of Kiryas Joel ("Village") pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). The EPA is issuing the Information Request to require the Village to provide specific information regarding the condition of its Municipal Separate Storm Sewer System ("MS4") and the actions needed to attain compliance with the CWA and with the State Pollutant Discharge Elimination System ("SPDES") General Permit for Storm Water Discharges from MS4s ("MS4 General Permit" or "Permit"). The EPA is issuing the Administrative Compliance Order because the Village has violated and remains in a state of noncompliance with CWA Section 301, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations of the MS4 General Permit.

Enclosed are two originals of the Order. Please acknowledge receipt of the Order on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the Town of Rotterdam to civil or criminal penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Also enclosed is the Audit Report for the Audit of the Village of Kiryas Joel's MS4 conducted by the EPA, on March 20 and 21, 2013.

If you have any questions regarding the enclosed Order, please contact Douglas McKenna, Chief, Water Compliance Branch, at (212) 637-4244.

Sincerely,

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, P.E, Director, Bureau of Water Compliance Programs, NYSDEC  
Zalmen Stern, Village of Kiryas Joel (With Enclosures)  
Natalie Browne, NYSDEC, Region 4 (electronic)



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2  
290 Broadway  
New York, New York 10007-1866

**IN THE MATTER OF:**

The Village of Kiryas Joel  
PO Box 566  
Monroe, NY 10949

SPDES Permit No. NYR20A496

Respondent

Proceeding pursuant to §§ 308(a) and 309(a) of the  
Clean Water Act, 33 U.S.C. §§ 1318(a) and 1319(a)

**INFORMATION REQUEST AND  
ADMINISTRATIVE COMPLIANCE ORDER**

**CWA-02-2014-3014**

**A. STATUTORY AUTHORITY**

The following Information Request and Administrative Compliance Order (together the "Order") are issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), respectively, 33 U.S.C. §§ 1318(a) and 1319(a). These authorities have been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA and permits issued by authorized States there under.
3. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include any individual, corporation, partnership, association or municipality.

4. "Municipality" is defined by Section 502(4) of the CWA, 33 U.S.C. § 1362(4), to include among other things, a city, town, borough, county, parish, district, associations, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
5. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States, and "waters of the United States" is defined at 40 C.F.R. 122.2 to include, among other things, waters which are currently used in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and all other waters, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce.
9. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of the EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objective of the CWA.
10. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of the EPA to issue an order requiring compliance with the CWA when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for, among other things, violating any condition or limitation contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

## **B. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Director makes the following findings of fact and conclusions of law:

1. The Village of Kiryas Joel ("Village" or "Respondent") is a public body established under the laws of the State of New York that owns and operates the Municipal Separate Storm Sewer System ("MS4") within the Village of Kiryas Joel and has jurisdiction over the conveyance and discharge of stormwater.
2. Respondent is a person under Sections 502(5) and 502(4) of the CWA, 33 U.S.C. §§ 1362(5) and 1362(4).

3. Respondent's MS4 includes over 105 piped outfalls, which are point sources from which Respondent discharges stormwater, a pollutant within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to the Palm Brook, Forest Brook, Tributary No. 25, Highland Brook and Coronet Brook which all are tributaries of the Ramapo River, a water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
4. On January 8, 2003, the NYSDEC issued permit No. GP-0-02-02, the SPDES General Permit for Storm Water Discharges from MS4s ("MS4 General Permit" or "Permit").
5. The MS4 General Permit became effective January 8, 2003, and expired on January 8, 2008.
6. On April 15, 2008, the NYSDEC issued MS4 General Permit No. GP-0-08-002, with an effective date of May 1, 2008, and an expiration date of April 30, 2010. GP-0-08-002 was administratively extended until the issuance of GP-0-10-002.
7. On April 29, 2010, the NYSDEC issued MS4 General Permit No. GP-0-10-002, with an effective date of May 1, 2010, and an expiration date of April 30, 2015.
8. On April 14, 2004, Respondent applied for and subsequently received authorization under the MS4 General Permit pursuant to permit No. NYR20A496, and has been covered under the conditions and limitations in the permit at all relevant times addressed by the Order.
9. The MS4 General Permit authorizes Respondent to discharge pollutants from MS4 outfalls to the Palm Brook, Forest Brook, Tributary No. 25, Highland Brook and Coronet Brook, which all are tributaries of the Ramapo River, under the conditions and limitations prescribed in the permit.
10. On March 20 and 21, 2013, the EPA and the NYSDEC conducted an Audit of the Respondent's MS4.
11. Based on the Audit findings, the EPA finds that Respondent has failed to comply with the CWA and the conditions and limitations of the MS4 General Permit, including but not limited to the following:
  - a. Part IV.D of the Permit requires all permittees to fully develop and implement their Stormwater Management Program ("SWMP"). At the time of the Audit, the Village failed to update their SWMP to incorporate the 2010 MS4 Permit (GP-0-10-002) changes. Therefore, Respondent is in violation of Part IV.D of the Permit.
  - b. Part VII.A.2.d of the Permit requires that permittees, *prior* to submitting the final annual report to the NYSDEC by June 1 of each reporting year, present the draft Annual Report in a format that is open to the public, where the public can ask questions about and make comments on the report. This can be done at a public meeting or on the internet, per the requirements listed in Part VII.A.2.d.i of the Permit. According to Village representatives, the draft Annual Report is not made available to the public prior to submitting the final Annual Report. Therefore, Respondent is in violation of Part VII.A.2.d of the Permit.

- c. Part VII.A.3.b.ii of the Permit requires that "by March 9, 2010, all covered entities must develop (for newly authorized MS4s) and maintain a map showing the preliminary boundaries of the covered entity's storm sewersheds have been determined using GIS or other tools, even if they extend outside of the urbanized area (to facilitate track down), and additionally designated area within the covered entity's jurisdiction." At the time of the Audit, the Village had not mapped its storm sewersheds. Therefore, Respondent is in violation of Part VII.A.3.b.ii of the Permit.
- d. Part VII.A.3.f of the Permit requires permittees to prohibit, through a law, ordinance, or other regulatory mechanism, *illicit discharges* into the MS4 and implement appropriate enforcement procedures and actions. At the time of Audit, Village representatives provided Local Law 1 of the year 2008 Chapter 125-13 through Chapter 125-32 entitled "Prohibition of Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems," as its local illicit discharge ordinance. Upon further review, it was determined that Chapters 125-13 through 125-32 were never filed and are not part of the Village Code. Therefore, at the time of the Audit, the Village did not have a local ordinance for illicit discharges as required by the Permit. Therefore, Respondent is in violation of Part VII.A.3.f of the Permit.
- e. Part VII.A.3.g of the Permit requires permittees to "develop (for newly authorized MS4s) and implement a program to detect and address non-stormwater discharges to the small MS4. The program must include, but is not limited to, the following: available equipment; procedures for identifying and locating illicit discharges (track down); procedures for eliminating illicit discharges; and, procedures for documenting actions." Although the Village's SWMP Plan does include the required information, based on the Audit and information provided, EPA has determined that the Village has not adequately implemented its program. Therefore, Respondent is in violation of Part VII.A.3.g of the Permit.
- f. Part VII.A.3.l of the Permit requires permittees who have been covered for at least three years or more to report on the following: number and percent of outfalls mapped, percent of outfalls for which an outfall reconnaissance inventory has been performed, status of system mapping, etc. During the Audit, Village representatives stated that no formal tracking program exists or that an inventory is taken for outfall inspections. Therefore, Respondent is in violation of Part VII.A.3.l of the Permit.
- g. Part VII.A.4.a.i of the Permit requires permittees to develop (for newly authorized MS4s), implement and enforce a program that provides equivalent protection to the NYSDEC Construction General Permit ("CGP"). At the time of the Audit, the Village's MS4 program did have a Local law for stormwater management that required sites to obtain CGP coverage, submit an NOI, and receive acknowledgement from the NYSDEC verifying coverage prior to the start of construction activity. Although this ordinance was in place, based on the Audit and information provided, EPA has determined that it was not being implemented or enforced. Therefore, Respondent is in violation of Part VII.A.4.a.i of the Permit.

- h. Part VII.A.4.a.ix of the Permit requires permittees to develop (for newly authorized MS4s), implement and enforce a program that describes procedures for site inspections and enforcement of erosion and sediment control measures, which includes determining that it is acceptable for the owner or operator of a construction project to submit the Notice of Termination ("NOT") to the NYSDEC by performing a final site inspection themselves or by accepting the Qualified Inspector's final inspection certification(s) required by the NYSDEC CGP. The principal executive officer, ranking elected official, or duly authorized representative shall document their determination by signing the "MS4 Acceptance" statement on the NOT. At the time of the Audit, the Village's MS4 program did not contain a mechanism that ensured that the "MS4 Acceptance" statement was signed by a qualified individual on the NOT. As evidenced by the inaccurate list of active construction sites, the Village has not been diligent in enforcing the NOT procedures. Therefore, Respondent is in violation of Part VII.A.4.a.ix of the Permit.
- i. Part VII.A.4.a.vii of the Permit requires permittees, implement and enforce procedures for Stormwater Pollution Prevention Plan ("SWPPP") review with consideration of potential water quality impacts and review of individual SWPPPs to ensure consistency with State and local sediment and erosion control requirements. At the time of the Audit, the Village did not have any procedures in place for SWPPP review. Therefore, Respondent is in violation of Part VII.A.4.a.vii of the Permit.
- j. Part VII.A.4.a.xii of the Permit requires permittees to develop (for newly authorized MS4s), implement and enforce a program that establishes and maintains an inventory of active construction sites, including the location of the site and owner/ operator contact information. At the time of the Audit, it was clear that the list of active construction sites was not properly maintained due to the abundant discrepancies of active and closed construction sites on the list. The NYSDEC construction stormwater database for Orange County/Kiryas Joel contained several construction sites that were said to have been completed, but no NOT was filed including, but not limited to, the following sites:
- i. Village of Kiryas Joel Business Center
  - ii. KJ Union Free School
  - iii. Kiryas Joel School
  - iv. Kiryas Joel Sidewalks Phase 7
  - v. Kiryas Joel Sidewalks Phase 6
- Therefore, Respondent is in violation of Part VII.A.4.a.xii of the Permit.
- k. Parts VII.A.4.a.xiii and VII.A.4.a.xiv of the Permit requires permittees to develop (for newly authorized MS4's) record, periodically assess and modify as needed measurable goals; and select appropriate construction stormwater BMPs [sic] and measurable goals to ensure the reduction of all pollutants of concern ("POCs") in stormwater discharges to the Maximum Extent Practicable ("MEP"). At the time of the Audit, the Village's SWMP Plan had all measurable goals identified as being completed in 2008. Upon review onsite, EPA representatives concluded that not all of the expired measurable goals were completed and the SWMP Plan had not been assessed and/or modified in recent years. Therefore, Respondent is in violation of Parts VII.4.a.xiii and VII.4.a.xiv of the Permit.

- l. Part VII.A.4.b.ii of the Permit requires permittees to report on the number and type of enforcement actions at construction sites. Based on review of Annual Reports from 2011 and 2012, which indicated that two (2) stop-work orders had been issued, did not accurately reflect the enforcement activity of the Village. It was determined that no stop-work orders were actually issued during 2011 & 2012. Therefore, Respondent is in violation of Part VII.A.4.b.ii of the Permit.
  - m. Parts VII.A.5.a.vi of the Permit requires permittees to maintain an inventory of post-construction stormwater management practices within the covered entities jurisdiction. Based on review of the Annual Reports and discussion with Village representatives during the Audit, the number of post-construction controls inspected and maintained has not been accurate. Therefore, Respondent is in violation of Part VII.A.5.a.vi
  - n. Part VII.A.6.a.ii of the Permit requires that all permittees must at a minimum frequency of once every three years, perform and document a self assessment of all municipal operations addressed by the SWMP to: determine the source of pollutants potentially generated by the covered entity's operations and facilities; and identify the municipal operations and facilities that will be addressed by the pollution prevention and good housekeeping program, if it is not done already. At the time of the Audit, the Village had never performed a self assessment of its operations or facilities. Therefore, Respondent is in violation of Part VII.A.6.a.ii of the Permit.
  - o. Part VII.A.6.a.vi of the Permit requires that all permittees develop (for newly authorized) and implement a pollution prevention / good housekeeping training program for municipal operations and facilities that includes an employee pollution prevention and good housekeeping training program and ensures that staff receive and utilize training. At the time of the Audit, there was no training program in place at the Village to ensure staff received necessary training. Therefore, Respondent is in violation of Part VII.A.6.a.vi of the Permit.
  - p. Part V.D of the Permit requires permittees to submit a Municipal Compliance Certification ("MCC") form, which is provided by NYSDEC on an annual basis. The MCC certifies that all applicable conditions of Parts IV, VII, VIII and IX of this SPDES General Permit are being developed, implemented and complied with. Furthermore, Part V.D states, if compliance with any requirement cannot be certified to on the MCC form, a complete explanation with a description of corrective measures must be included as requested on the MCC form. Failure to submit a complete annual report, as required by Part V.C, and a complete MCC form shall constitute a permit violation. During the Audit, EPA representatives observed numerous discrepancies in the information reported in the 2011 and 2012 Annual Reports. Therefore, Respondent is in violation of Part V.D of the Permit.
12. Based upon Paragraphs 1-11 above, the EPA finds that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations in the MS4 General Permit.

### C. REQUESTED INFORMATION

Based on the Findings of Fact and Conclusions of Law, above, and pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Respondent is required to submit to the EPA in writing a written response regarding each of the listed Areas of Concern and Recommendations in the enclosed Audit Report within ninety (90) days of receipt of this Order.

### D. ORDERED PROVISIONS

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

1. Respondent shall complete the following items in accordance with the schedule listed below:

<u>Item</u>	<u>Completion Deadline</u>
i. Implement the Village's written procedures for detecting and addressing non-stormwater discharges into the MS4, as required by Part VII.A.3.g of the Permit.	Immediately upon receipt of Order.
ii. Develop, and submit to EPA and NYSDEC, written procedures for an inventory, tracking and implementation system for providing equivalent protection to the NYSDEC Construction General Permit, as required by Part VII.A.4.a.i of the Permit. Procedures shall be implemented upon EPA approval.	Immediately upon receipt of Order.
iii. Develop, and submit to EPA and NYSDEC, an accurate post construction inventory as required by Part VII.A.5.a.vi of the Permit.	Immediately upon receipt of Order.
iv. Develop, and submit to EPA and NYSDEC, written procedures for an inventory and tracking system for outfall reconnaissance inspections, as required by Part VII.A.3.l of the Permit. Procedures shall be implemented upon EPA approval.	December 31, 2013
v. Develop, and submit to EPA and NYSDEC, a written inventory and tracking system for active construction sites, as required by Part VII.A.4.a.xii of the Permit. System shall be implemented upon EPA approval.	December 31, 2013

vi.	Develop, and submit to EPA and NYSDEC, updated measurable goals for all minimum control measures, as required by Part VII.A.4.a.xii and VII.A.4.a.xiv of the Permit.	December 31, 2013
vii.	Develop, implement, and submit to EPA and NYSDEC, updates to the SWMP reflecting changes to the MS4 General Permit (GP-0-10-002), as required by Part IV. D of the Permit.	January 31, 2014
viii.	Submit, to EPA and NYSDEC, a copy of an enacted law, ordinance, or other regulatory mechanism, which prohibits <i>illicit discharges</i> into the small MS4 and implements appropriate enforcement procedures and actions as required by Part VII.A.3.f of the Permit.	January 31, 2014
ix.	Develop, and submit to EPA and NYSDEC, a program that describes procedures for SWPPP review which includes consideration of potential water quality impacts, consistency with state and local sediment and erosion control requirements, and training requirements for individuals performing SWPPP review as required by Part VII.A.4.a.vii of the Permit. Program shall be implemented upon EPA approval.	January 31, 2014
x.	Develop, and submit to EPA and NYSDEC, a program that describes procedures for site inspections, enforcement of erosion and sediment control measures, including steps to identify priority sites for inspection, enforcement, and procedures for signing the MS4 acceptance statement on the Notice of Termination, as required by Part VII.A.4.a.ix of the Permit. Program shall be implemented upon EPA approval.	January 31, 2014
xi.	Develop, and submit to EPA and NYSDEC, an employee pollution prevention and good housekeeping training program that ensures employee training is provided to staff and utilized as required by Part VII.A.6.a.vi of the Permit. Program shall be implemented upon EPA approval.	January 31, 2014
xii.	Develop, and submit to EPA and NYSDEC, a map showing the preliminary boundaries of storm sewersheds, as required by Part VII.A.3.b.ii of the Permit.	February 28, 2014



<p>xiii. Conduct, and submit to EPA and NYSDEC, a self assessment of all municipal operations addressed by the SWMP to determine sources of pollutants and identify the municipal operations and facilities that will be addressed by the pollution prevention / good housekeeping program, as required by Part VII.A.6.a.ii of the Permit.</p>	<p>February 28, 2014</p>
<p>xiv. Present the draft Annual Report in a format that is open for public comment, as required by Part VII.A.2.d of the Permit. After presenting the draft Annual Report for public comment, Respondent must submit a written report to EPA and NYSDEC summarizing the public comment period and a list of comments received.</p>	<p>June 1, 2014</p>

**E. GENERAL PROVISIONS**

1. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. § 122.22, be sent by certified mail or its equivalent to:

Douglas McKenna, Chief  
 Water Compliance Branch  
 Division of Enforcement and Compliance Assistance  
 U.S. Environmental Protection Agency - Region 2  
 290 Broadway - 20th floor  
 New York, NY 10007-1866

and shall be signed by an authorized representative of Respondent, and shall include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

2. Immediately upon receipt of the original copies of this Order, a responsible official of Respondent shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Agency representative named above, in paragraph E.1., in the enclosed envelope.
3. Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer regarding the Requested Information or Ordered Provisions, with the Agency representative named above, in paragraph E.1.

4. Respondent may seek federal judicial review of the CWA Section 309(a) Administrative Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. It is an action taken by the EPA to ensure swift compliance with the CWA, and its issuance shall not be deemed an election by the EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
6. Notice is hereby given that failure to provide the information requested in Section C, above, pursuant to CWA Section 308(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has failed to provide any of the Requested Information. You may also be subject to administrative remedies for failing to comply with the Information Request, as provided by Section 309 of the CWA.
7. Notice is also given that failure to complete the provisions ordered in Section D, above, pursuant to CWA Section 309(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has violated the CWA as described above and failed to comply with the Ordered Provisions. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Administrative Compliance Order.
8. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
9. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: NOVEMBER 22, 2013

Signed: \_\_\_\_\_

Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

The Village of Kiryas Joel  
PO Box 566  
Monroe, NY 10949

SPDES Permit No. NYR20A496

Respondent

Proceeding pursuant to §§ 308(a) and 309(a) of  
the Clean Water Act, 33 U.S.C. §§ 1318(a) and  
1319(a).

**INFORMATION REQUEST AND  
ADMINISTRATIVE COMPLIANCE ORDER**

**CWA-02-2014-3014**

**ACKNOWLEDGMENT OF RECEIPT OF  
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER**

I, \_\_\_\_\_, an officer of the Respondent, with the title of,  
\_\_\_\_\_, do hereby acknowledge the receipt of copy of the  
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-  
2014-3014.

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

The Village of Kiryas Joel  
PO Box 566  
Monroe, NY 10949

SPDES Permit No. NYR20A496

Respondent

Proceeding pursuant to §§ 308(a) and 309(a) of  
the Clean Water Act, 33 U.S.C. §§ 1318(a) and  
1319(a).

**INFORMATION REQUEST AND  
ADMINISTRATIVE COMPLIANCE ORDER**

**CWA-02-2014-3014**

**ACKNOWLEDGMENT OF RECEIPT OF  
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER**

I, \_\_\_\_\_, an officer of the Respondent, with the title of,  
\_\_\_\_\_, do hereby acknowledge the receipt of copy of the  
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-  
2014-3014.

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_





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**Municipal Separate Storm Sewer System (MS4) Audit**  
**Kiryas Joel (NYR20A496)**  
**March 20 – March 21, 2013**

**Prepared by:**

**United States Environmental Protection Agency Region 2**  
**290 Broadway**  
**New York, New York 10007**

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## 1. INTRODUCTION

On March 20 through March 21, 2013 the United States Environmental Protection Agency (EPA), Region 2, conducted a program evaluation, or Audit, of the Village of Kiryas Joel (Village or KJ) Municipal Separate Storm Sewer System (MS4). EPA is granted the authority to conduct the Audit through 40 CFR 122.41(i) and Section 308 of the Clean Water Act. Mr. Christopher Mecozzi of EPA Region 2 conducted the Audit. Mr. Murray Lantner, also from EPA Region 2, was present for the Audit, as well as EPA interns Richard Lee, Andrea Scher and Lei Zhang. EPA staff was accompanied by Ms. Natalie Brown from New York State Department of Environmental Conservation (NYSDEC or DEC).

The following Town departments and individuals were present during the Audit:

Kiryas Joel Department of Public Works (Zalmen Stern, Lipa Klein)  
MacDonald Engineering (Gerald P. MacDonald, P.E.)  
Jacobowitz & Gubits, LLP (Donald G. Nichol)  
NYSDEC (Natalie Browne)

The purpose of the Audit was to determine the Village's compliance with the terms of its State Pollutant Discharge Elimination System MS4 Permit and to evaluate the current implementation status of the Village's stormwater management program. For the detailed Audit agenda see Attachment A. Prior to conducting the Audit, EPA Region 2 reviewed program materials provided by the Village and NYSDEC for a list of said materials, see Attachment B. EPA Region 2 was provided with copies of additional program materials during and after the Audit for a list of said materials, see Attachment C. During the Audit, EPA evaluated the six (6) Minimum Control Measures (MCMs) established by the Permit, specifically, Public Education and Outreach; Public Involvement and Participation; Illicit Discharge, Detection and Elimination; Construction Site Stormwater Runoff Control; Post Construction Stormwater Management; and Pollution Prevention and Good Housekeeping for Municipal Operations. EPA Region 2's Audit included in-field verification of program implementation.

## 2. HISTORY & BACKGROUND

The State of New York is the delegated permitting and enforcement authority for the National Pollutant Discharge Elimination System (NPDES), or State Pollutant Discharge Elimination System (SPDES), program. NYSDEC is the delegated agency that implements the SPDES program and as such, issued a SPDES General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (GP-0-10-002), which became effective on May 1, 2010 and expires on April 30, 2015 (Permit).

The Village of Kiryas Joel submitted a Notice of Intent (NOI) signed on April 14, 2004 to NYSDEC and subsequently received Permit coverage under the SPDES General Permit (GP-02-02) (Permit No. NYR20A496) (the acknowledgement letter from NYSDEC is dated April 28, 2004). Former SPDES General Permit GP-02-02 became effective January 8, 2003 and expired on January 8, 2008. Permit coverage remained in full force and effect and was automatically carried over upon the reissuance of SPDES General Permit GP-08-002, which became effective on May 1, 2008 and expired on April 30, 2010. Upon expiration, permit coverage was automatically carried over to the current permit, GP-0-10-002, which, became effective on May 1, 2010 and expires on April 30, 2015.

### **3. PROGRAM EVALUATION FINDINGS**

#### **A. Evaluation Stormwater Management Program (SWMP), Management Structure and Effectiveness**

Based on information provided by Village representatives during the Audit, the Village of Kiryas Joel is approximately 1.1 square miles with a population size of approximately 22,195 residents. There are approximately 8-10 miles of Village-dedicated roadway, which are maintained by the Village except for snow removal which is done by the Town of Monroe. The Village is located in Orange County, New York and is fully within the Town of Monroe except for portions of the Village that is bordered by the Town of Woodbury on the east. The Village of Kiryas Joel's stormwater collection system is a combination of storm sewers, inlets, catch basins, drywells, recharge basins and outfalls.

Mr. Gerald MacDonald, Village Engineer, is the current MS4 contact for the Village. Mr. MacDonald and Mr. Zalmen Stern, Superintendent of the Department of Public Works (DPW), are responsible for the coordination of the Village's MS4 program.

There is not a "stormwater committee" that meets on a regular basis in the Village as part of the overall coordination of the MS4 program. Communication and coordination regarding compliance with the MS4 program is done at a minimum on a weekly basis between Mr. Stern and Mr. MacDonald.

Kiryas Joel is a permitted MS4 within, and separate from, the Town of Monroe. Although there are interconnections (e.g. Schunnemunk Road and Koznits Road), there is no intermunicipal agreement to form a coalition with Monroe or Woodbury. Although there is no written contract, there is a verbal agreement with Kiryas Joel and the Town of Monroe to provide services, including winter snow removal and allowing the Village to dump their street sweeper waste, among other things at the Monroe DPW yard. The Village of Kiryas Joel does not have a working relationship with the Town of Woodbury.

According to Mr. Stern, the Village's Stormwater Management Plan (SWMP) was originally developed in 2004 by Jacobowitz & Gubtis, LLP. The SWMP was referenced in the April 28, 2004 Acknowledgement of Notice of Intent by DEC. The Illicit Discharge Detection and Elimination portion of the SWMP was revised in November 2011 by Jacobowitz & Gubtis, LLP and have not been revised or updated since. In accordance with the 2003 permit, the Village was required to have fully implemented its SWMP Plan by January 8, 2008. Mr. Stern stated at the time of the Audit that the SWMP Plan has been fully implemented. During the 2009 Compliance Audit performed by the NYSDEC it was deemed to not be fully implemented. At the time of the EPA Audit on March 20 – 21, 2013, the SWMP Plan had not yet been updated to reflect changes in the 2010 MS4 Permit. The Village does not have a website to display the SWMP Plan; however, it would be made available for review by the public upon request, according to Mr. Stern.

According to Mr. Stern, the program is funded solely from Tax money and they have not applied or received any grants from the state of New York. There are multiple funding sources to leverage grants, including public bonds and capital improvement accounts, none of which have been explored by the Village.

The Village of Kiryas Joel is not located within a current TMDL watershed listed in Part III.B.2 of the Permit. In accordance with Part III.B.1 of the Permit, by January 8, 2013, covered entities must assess

potential sources of discharge of stormwater Pollutants of Concern (POC(s)), identify potential stormwater pollutant reduction measures, and evaluate their progress in addressing the POC(s). During the Audit, Village representatives stated that the Village has not formally assessed potential sources of POCs the program is reactive and not proactive. In the 2009 DEC MS4 Audit report, floatables were marked as the identified POC's.

**B. Public Education and Outreach / Public Involvement and Participation (MCMs 1 and 2)**

In accordance with Part VII.A.1.a of the Permit, the Village must identify target audiences in its SWMP Plan, amongst additional requirements. The Village's SWMP Plan does not identify target audiences or impaired waterbodies. During the Audit, Mr. Stern stated that public outreach is addressed through the ongoing decaling of stormwater curb inlets which was observed in the field, and issued EPA public awareness bulletins in water and sewer bills. These materials are also being circulated in schools and posted in public places such as Village Hall.

According to Village representatives, there has been no annual meeting for solicitation of comments for the SWMP Plan in the past; however, as stated by Mr. Stern there is not much community involvement with the program and they expected that no one would come if there was a meeting.

Measurable Goals

**MCM 1**

- Included in current SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

Measurable Goals for MCM 1 – Public Education and Outreach

<u>Year Annual Report Submitted</u>	<b>2011</b>	<b>2012</b>
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Indicator: Public meeting on annual report	Village "Hot line" for reporting illicit discharges established and published in the local newspaper  Start including USEPA Stormwater publications with semi-annual utility bills to Village residents.
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	8 Events, No public comments received	Village Officials notice streets and sidewalks cleaner and garbage disposal better controlled.
<b>Measurable goal for next reporting cycle?</b>	None reported	Continued semi-annual publication of a EPA published article on municipal stormwater management in local newspaper  Continued mailing of USEPA Publications with Village Semi-annual utility bills  Continued holding of annual meeting on recommended stormwater management practices with contractor.

## MCM 2

- Included in current SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

### Measurable Goals for MCM 2 – Public Involvement

<u>Year Annual Report Submitted</u>	<b>2011</b>	<b>2012</b>
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Indicator: Public meeting on annual report	By informing the public of importance of stormwater management practices via newspaper articles and brochures included with utility bills, the Village hopes to begin engendering a sense of community participation in keeping the Village looking clean and free of debris.
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	8 Events, No public comments received	Village officials are beginning to see an increase in public responsibility for keeping a clean appearance in sections of the Village.
<b>Measurable goal for next reporting cycle?</b>	None reported	Village officials are beginning to see an increase in public responsibility for keeping a clean appearance in sections of the Village.

## C. Illicit Discharge Detection and Elimination (“IDDE”) (MCM 3)

### IDDE Ordinance

In accordance with Part VII.A.3.f of the Permit, the Village is required to have an ordinance prohibiting illicit discharges into the MS4. The Village drafted the Stormwater Management Local Law 1 of the year 2008 Chapter 125-13 through Chapter 125-32 entitled “Prohibition of Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems.” The law was certified by Donald G. Nichol, Esq, Village Attorney, October 10, 2008 and attached as Appendix “B” of the MS4 program manual for IDDE. After further review, Chapter 125-13 through Chapter 125-32 do not exist in the Village Code. Appendix “B” of the IDDE manual is a local law filing form which was never carried out and accepted. At the time of the Audit, the Village of Kiryas Joel did not have an ordinance prohibiting illicit discharges into the MS4 as required.

### Outfall Mapping

The Village’s 2011 and 2012 Annual Report indicates that there are 105 identified outfalls, and 100% of these have been mapped. The Village’s IDDE manual that was revised in 2011 states 106 total outfalls. When questioned about the difference, Village representatives explained it as an oversight; the correct number is 105 outfalls.

During the Audit, Village representatives stated that the original mapping was not completed by January 8, 2005 as stated in the initial SWMP. Village representatives stated that the mapping was completed on December 16, 2008, and that since this completion date, the maps have not updated. The maps are in hardcopy format only and are not available in GIS. Preliminary storm sewershed boundaries have not been mapped by the Village as required to be completed by March 9, 2010 by part VII.A.3.b.ii of the permit.

### Outfall Inspections

The Village's initial SWMP Plan states that the Village will be able to start inspecting the system as early as January 8, 2005. Village representatives stated during the inspection that the outfall screening is done annually and a random 20% of the outfalls are inspected. The IDDE manual states that the screening will be broken down by Subwatershed which will be rotated through the following 5 years to get to 100% of the system. Village representatives stated that the outfalls are inspected visually and checked off a list. When asked to provide a copy of the outfall inspection records for the last 5 years, none were available at the time of the Audit. Village representative showed a copy of the outfall maps with check marks next to the outfalls that had been inspected. This is the only record of outfall inspections that was available at the time of the Audit. Village representatives were asked for a list of priority areas of concern for screening that are regularly visited, which was not available at the time of the Audit. The IDDE manual states 9 locations that have a "High potential for illicit discharges." The IDDE manual references the attached "Outfall Reconnaissance Inventory Field Sheet." No completed copies of this inventory list were available at the time of the Audit.

### IDDE Investigation and Enforcement

The Village's IDDE manual lists procedures for *identifying and locating* illicit discharges, dry weather screening, as well as procedures for *eliminating* illicit discharges. Annual reports show that the Village has yet to identify an illicit connection.

The Audit confirmed that the Village has developed a written program that includes the following: available equipment for investigating potential illicit discharges; procedures for track down; and procedures for eliminating illicit discharges; however, the program has not been adequately implemented.

### Spill Prevention & Response

In response to complaints reporting spills, the Village's representative stated that for all spills DEC is contacted. For spills that are large enough, contractors will be called in to clean and/or remove contaminated area. There have been 3 spills in the Village where DEC has been contacted and contractors have been hired. The Village does not have a tracking system to record any information such as cost, total amount spilled, etc. of these spills. One spill was for an estimated 1,000 gallons of fuel that resulted in 6,000 tons of contaminated soil to be removed for a cost of \$150,000. The second spill was approximately 10 gallons of fuel into a wetland for an undisclosed cost of cleanup. The third spill was from a homeowner draining home fueling tanks into the sanitary lines that led to the Harriman Waste Water Treatment Plant. Village representatives stated that the Village trucks have sorbent pads and socks for smaller spills. It was noted that no formal spill response training is administered to Village employees.

The Village does not track the number of public calls or complaints reporting spills or any other type of public complaint. Village representatives stated that none of the Village is on septic systems.

Measurable Goals

- Included in SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

Measurable Goals for MCM 3 – IDDE

<u>Year Annual Report Submitted</u>	2011	2012
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Indicator: Number of illicit Discharges identified/eliminated	This year ended 5-year program to complete all Village stormwater outfall inspections. The periodic inspection of potential “hot spots” continued with advisory comment by Village inspection when necessary.
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	The Village has developed a tracking system and illicit discharges that have been identified are being eliminated, on average within two weeks of discovery.	Stormwater outfalls remained free of illicit discharges and hot spots have greatly improved.
<b>Measurable goal for next reporting cycle?</b>	N/A	Start second round of stormwater outfall structure inspections starting with Pam Brook subwater shed with contains 20% of Village outfalls. Bi-monthly inspections of Village “hot spots” will continue with follow-up inspections as necessary.

Field Component

EPA conducted outfall reconnaissance on both March 20 and March 21, 2013. EPA’s findings and observations at each outfall are summarized in the table below. Weather conditions at the time of the outfall observations were dry, however it snowed on March 19, 2013 which caused EPA to postpone the Audit until March 20, 2013. Photographs of the outfalls and catch basins observed are included in Attachment E.

**EPA Outfall Reconnaissance March 20 and 21, 2013– Village of Kiryas Joel**

<b>KJ MS4 Outfall Visited</b>	<b>Description</b>	<b>Status</b>
401	Behind Kiryas Joel DPW garage	Small flow ammonia levels 0.25, chlorine 0 mg/l. No odors observed. This is the outfall that would most likely receive overflows from the KJ Poultry Pretreatment Plant if they were occurring.
400	Across Highland Brook and downstream from the DPW garage.	There was a clear, non-turbid flow from this outfall. Ammonia and Chlorine levels were 0 mg/l. There were some bottles and debris



		observed at the outlet.
501	Catch basin discharges to Coronet Brook on Israel Zupnick Drive	No foams or sheens seen at this outfall.
502	Catch basin discharges to Coronet Brook on Israel Zupnick Drive	There was a trickle, no odor, ammonia levels 0 to 0.25 mg/l.
405	Bakertown Road/Highland Brook (outfall on the same side of the Highland Brook and Bakertown Road as Dinev Road.	No Discharge; No problems noted.
403	Bakertown Road/Highland Brook (Outfall across Bakertown Road from Dinev Road and across Highland Brook from Dinev Road	No Discharge; No problems noted.
404	Bakertown Road/Highland Brook (was said during the inspection to be outfall 402, but appears to be 404) (Outfall is on the same side of Highland Brook as Dinev Road and across Bakertown Road from Dinev Road)	The outfall and tributary catch basin had a considerable amount of mud and were in need of cleaning. There was no discharge at the time of this inspection.

### **Kiryas Joel Poultry/Dinev Road**

1. Based upon an EPA Compliance Evaluation Inspection of the Kiryas Joel Poultry plant on May 11, 2010, EPA identified that the Kiryas Joel Poultry facility failed to obtain the required NYSDEC Multi Sector General Permit for Stormwater Discharges (MSGP) and that the facility was discharging untreated and partially treated wastewater as well as chicken parts into the Kiryas Joel MS4 see Attachment E. MSGP coverage for the KJ Poultry Plant was obtained on or about May 1<sup>st</sup>, 2011. KJ Poultry's pretreatment facility is located adjacent to KJ DPW garage and the KJ Poultry plant is located within 1,000 feet of the KJ DPW garage
2. On February 21, 2013, EPA visited catch basins on Dinev Road. At this time there was a strong odor that, based on previous EPA visits to the poultry plant, appeared to be a poultry plant related waste/wastewater in the catch basin that is shown in photos 120, 122, 123 and video 121 see Attachment F and identified on the map (see Attachment G). 4) During the March 20 and 21, 2013 inspection KJ MS4 and Kiryas Joel Poultry personnel indicated that the trucks associated with Kiryas Joel Poultry would no longer be parked on Dinev Road which will avoid any leakage or other material from these trucks entering the catch basins on Dinev Road. Trucks will now be parked across Dinev Court from the Kiryas Joel Poultry facility. This new Kiryas Joel Poultry truck parking area must be added to Kiryas Joel Poultry's Stormwater Pollution Prevention Plan (SWPPP) and appropriate Best Management Practices (BMPs) installed so that pollutants associated with the truck parking area are not discharged to the Kiryas Joel MS4 or nearby surface waters.
3. On February 21, 2013 EPA observed a damaged catch basin at the corner of Bakertown Road and Dinev Road as shown in photographs 124 and 125 and video 126.

### **D. Construction and Post Construction Site Stormwater Runoff Control (MCMs 4 and 5)**

#### Construction Site Ordinance

The Village ordinance for Stormwater Management Chapter 125-1 through Chapter 125-12, was

adopted by the Village Board on September 4, 2007. The basis for the plan review procedures for Chapter 125 was the August 2005 New York State Standards and Specifications for Erosion and Sediment Control, and the New York State Stormwater Management Design Manual from August 2010. The Village ordinance includes SWPPP requirements, performance and design criteria, maintenance and repair of stormwater facilities, administrative enforcement, enforcement penalties, and fees for service. Included in the stormwater management ordinance are §125-7.G & §125-9.C, Contractor certifications and Maintenance after Construction, respectively, both of which Kiryas Joel representatives expressed as not being developed during the Audit.

### Construction Site Inventory

Prior to the Audit, the Village provided EPA with the following list of active construction sites within the Village MS4 greater than one (1) acre:

- (1) Mountainview Road Condominium, Mountain Road
- (2) Acres Estate II - Lemberg Court & Acres Road
- (3) Bakertown Road Condominiums - Dinev Road

EPA compared the inventory provided by the Village with active sites listed in the NYSDEC's Notice of Intent (NOI) database for active construction sites, which is available online at <http://www.dec.ny.gov/imsmaps/stormwater/viewer.htm>. According to the NYSDEC database, 13 construction sites were listed, with 11 marked as active without termination dates. During the Audit, representatives explained that of the 11 sites listed as active, 7 of them were finished with construction but did not submit Notice of Termination (NOT) forms. Mountain Hill Condos, aka Delta Bronze V was not listed on the active construction list submitted to EPA prior to the Audit, but was on the NYSDEC database and a portion of the Delta Bronze V site was still active with ongoing construction activities. Two other active sites, The United Talmudical Academy of Kiryas Joel (UTA of KJ) and Kinder Park were also not on the list of active construction sites submitted to EPA prior to the Audit. The UTA of Kiryas Joel was not in the NYSDEC Database. The Kinder Park, which is within the Town of Monroe, but owned and operated by the Village of Kiryas Joel, did have NYSDEC Construction General Permit coverage. All 6 active construction sites were inspected for compliance during the Audit. UTA of KJ is an unpermitted construction site that is active, and is located directly behind the DPW garage. The Village does not maintain an accurate inventory of active construction sites within the MS4's jurisdiction.

### SWPPP Review

The Village's SWMP Plan states the Planning Board Engineer review any SWPPP to ensure compliance with all state and local standards. The Planning Board Engineer stated that he does not have any written SWPPP review procedures to ensure compatibility with local and state laws and relies on his experience to determine if the SWPPP's are adequate. The 2011 Stormwater Pollution Prevention Plan Review Procedures & Construction Site Monitoring & Enforcement Procedures manual submitted to EPA states, "The planning board looks to its engineer to verify a site's plan technical compliance prior to considering site plan approval."

After a SWPPP is reviewed and accepted, the MS4 Acceptance form is not utilized to inform the contractor of the approval, instead a letter from the Village Engineer to the MS4 coordinator is issued with the contractor copied. This process is utilized for citing deficiencies at construction sites as well.

## Construction Site and Post-Construction Inspections

§125-10.A.1 of the Village Code requires the construction site applicant to notify the Village at least forty-eight (48) hours prior to the start of construction activities and completion of final landscaping, amongst additional milestones throughout the construction process, for the purpose of the Village conducting an inspection prior to, during and after these milestones. The notification and inspection requirements in the Village Code mirror those included in the NYSDEC Sample Local Law for Stormwater Management and Erosion and Sediment Control. Gerald McDonald, P.E. is the only Consulting engineer for the Village for stormwater related issues.

According to the SWMP Plan, a detailed SWPPP must be prepared in compliance with current stormwater management requirements, and construction personal onsite must be supervised by full time construction manager, who has a minimum of 4 hours DEC training. Full-time Village staff must visit construction sites regularly, and for larger construction sites over one acre must have a self-inspector review the site within 24 hours of a rain event consisting of .5" of rainfall and at a minimum of once per week. The SWMP states that if underground stormwater features are installed without Village staff present, the site manager is required to provide job photographs as necessary to ensure proper construction.

The SWMP plan states, "The Village has adopted model stormwater and illicit discharge local laws," upon further review it was noted that the stormwater ordinance is in the Village code; however, the illicit discharge ordinance is not. The Village has also prepared a local law permitting the Village to perform any stormwater work on a site that is required, yet the property owner has failed to perform. In this event, the Village can perform the necessary work to return the site to compliance and assess the cost back against the property owner on a tax bill. The draft language of this law is in Appendix "A" of the 2011 SWMP Review Procedure & Construction Site Monitoring & Enforcement Procedures. At the time of the Audit, this law was also not found in the Village Code.

The Village does not have a tracking system in place to document inspections of construction sites or post-construction stormwater management practices and maintenance performed.

## Construction Site Enforcement

Chapter 125 of the Village Code includes enforcement authority mechanisms for penalties, stop work orders and imprisonment.

The Village's SWMP Plan states the following: "Notice of Violation. If the Village determines that a violation has occurred, the notice of violation should generally contain: (1) The name and address of landowner, developer or applicant; (2) the address when available or a description of the building, structure or land upon which the violation is occurring; (3) a statement specifying the nature of the violation; (4) a description of the remedial measures necessary to bring the land development activity into compliance with this local law and a time schedule for the completion of such remedial action; and (5) a statement of the penalty or penalties that may be assessed against the person(s) to whom the notice of violation is directed."

At the time of the Audit, the Village provided copies upon EPA's request for any enforcement actions issued by the Village in 2013 for construction violations. EPA received copies of 6 NOV's and 1 stop work order issued in 2013. Upon further review of these documents it was discovered that all of the

issued actions were addressed to the DPW Superintendent (Mr. Stern) from the Consulting Engineer (Mr. MacDonald) and the landowner, developer or applicant responsible received a copy of the correspondence. It is the position of EPA that this procedure does not constitute an issuance of a Notice of Violation or a Stop Work Order as claimed by the Village. At the time of the Audit, Village representatives stated that the Village has not collected a penalty against any construction site for any violation since the MS4 was incorporated.

The annual report for 2011 and 2012 reported that a combined 34 NOV's and 2 Stop Work orders had been issued, which does not accurately reflect the enforcement activity performed by the Village, since no Notices of Violations or stop work orders were actually issued to an Owner or Operator of a construction site.

Notice of Termination (NOT)

As previously mentioned, and evidenced by the active construction list discrepancies, the Village does not conduct final inspections before signing off on NOT's at permitted construction sites. The Village's SWMP Plan does not include a written procedure for final inspections and signing the MS4 acceptance statement on the NOT. Chapter 125-11 Part F. of the Village code, Withholding of certificate of occupancy, states "If any building or land development activity is installed or conducted in violation of this local law, no certificate of occupancy shall be issued and no building or land shall be occupied." Village representatives stated that they have used this enforcement tool in the past, but no record of this could be produced to document withholding of the certificate of occupancy.

Training

At the time of the Audit, the Village representatives stated that they do not provide training to local construction operators but check to make sure they have training and ask them to get the required training if they do not have it. The Village submitted a staff training schedule to EPA that listed five total training events from 2005 until the time of the Audit. The list submitted did not have the names of the participants or completion certifications for the trainings.

Measurable Goals

**MCM 4**

- Included in current SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

Measurable Goals for MCM 4 – Construction

<u>Year Annual Report Submitted</u>	<b>2011</b>	<b>2012</b>
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Percent SWPPs reviewed	All ongoing construction sites are periodically inspected. SWPPP sites are Self-inspected weekly by qualified professionals with reports. Smaller sites are inspected weekly
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	100% of SWPPs were reviewed. 67% of the SWPPs reviewed were returned with comments reflecting NYS standards. (3 reviewed)	Officials are noticing closer compliance with approved plans, stormwater management and erosion and sediment control details resulting in less adverse environmental impacts from construction sites

<b>Measurable goal for next reporting cycle?</b>	None reported	Village plans to continue its on-site inspections of all ongoing construction sites to insure compliance with SWPPP. On site foremen will be frequently checked form proof of erosion control training.
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During the Audit, the Village representatives stated that there is no formal SWPPP review process in place to assure compliance with state and federal regulations. SWPPPs are reviewed by the Village engineer who relies on his years of experience in the field to determine compliance.

During the Audit it was confirmed by Village officials that there is no tracking system in place to monitor active construction sites after SWPPP acceptance. The Village does not use the NYSDEC MS4 acceptance form to notify the applicant of SWPPP approval, instead the Village engineer sends a letter to the applicant stating that their SWPPP has been accepted.

With regards to complaints, Village representatives stated that there is no record to track complaints but they are usually addressed within one to two days. According to the 2011 annual report the Village issued (14) Notice of Violations, and (1) Stop Work Order. According to the 2012 annual report, the Village issued (20) Notice of Violations, and (1) Stop Work Order.

Based on EPA’s review of the Notice of violations and stop-work orders issued by the Village, all correspondence is addressed to the DPW superintendent and not the violating party.

**MCM 5**

- Included in current SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

**Measurable Goals for MCM 5 – Post Construction**

<u>Year Annual Report Submitted</u>	2011	2012
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Number of reports of detention/ treatment device overflows during storms	All post-aeration construction stormwater management facilities continue to be the responsibility of the individual Homeowner Associations who contract for required ongoing maintenance.
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	No overflows or flooding of any post construction devices.	All existing post-construction permanent facilities are observed by the Village Officials for adverse impacts and to date, none have been observed.
<b>Measurable goal for next reporting cycle?</b>	None reported	Village considers a system for municipal take-over of permanent post-construction stormwater facilities, the individual Homeowner Associations must continue to contract for necessary maintenance.

During the Audit, Village representatives admitted that there is no tracking system in place to monitor post construction maintenance or a list of permanent post construction BMPs. The Stormwater management local law adopted 2007 states that at a minimum a preventative and corrective maintenance program must be established for all facilities and systems of treatment and control which are installed or used by the owner or operator to achieve the goals of this law. According to the 2011 annual report, the Village inspected (1) filter system, (25) infiltration basins, and (2) ponds. According to the 2012 annual report, the Village inspected (1) filter system, (12) infiltration basins, and (2) ponds, which shows a reduction of 13 permanent post-construction infiltration basins.

### Field Component

During the Audit, EPA visited (4) permitted construction sites in the Village to assess the implementation of construction stormwater plans:

1. Mountainview Road Condominiums
2. Acres Estates II
3. Bakertown Road Condominiums
4. Mountain Hill Condos aka Delta Bronze V. (Note: The Delta Bronze site was not included in the original inventory of active sites provided by the Village, but it was discussed during the Audit.)

EPA also visited the United Talmudical Academy of Kiryas Joel, an unpermitted construction site in the Village. Findings and observations from each site are summarized below.

### **Mountainview Condominiums (SPDES Construction Permit No. NYR10V297), Mountainview Road, Kiryas Joel, NY (March 20 and 21, 2013)**

EPA conducted a reconnaissance inspection of this site on March 20 and 21, 2013, and met with site representatives Moshe Silverstein and Abe Muller during these inspections. The facility has a stormwater retention pond that receives flow from the higher portions of this site and also flows from the Vaad Mountain development across Mountain Road.

The SPDES General Permit for Stormwater From Construction Activity (CGP) GP-0-10-001 as well as previous CGPs require that at the completion of an inspection, the qualified inspector shall notify the owner or operator of any corrective actions that need to be taken, and the contractor shall begin implementing the corrective actions within one business day of this notification. Based on review of the site inspection records there were multiple items that the stormwater consultant outlined as deficiencies that existed for at least several weeks without being corrected. For example, the inspection reports conducted by the qualified site inspector on February 15, February 21, and March 7, 2013 each identified that;

- The swale and check dam need to be restored;
- All disturbed idle areas at the construction site need to be stabilized;
- All silt fence that is blown out or knocked down needs to be restored;
- Construction entrance needs to be restored;
- The inspections from February 21 and March 7, 2013 indicated that the Temporary Diversion Swale needs to be directed to the basin.

Part IV.C of the CGP requires that Qualified Site Inspections be conducted weekly (unless there is notification to the NYSDEC for a winter or temporary site shutdown and stabilization of the site).

During the inspection EPA reviewed the Qualified Site Inspection reports for the past year (dates in the table below). As indicated in the table below there are gaps in the inspections for period well over 7 days (see highlighted entries in the Table below).

Table: Qualified Site Inspections August 2012 to March 7, 2013			
Date of Site Inspection by Qualified Site Inspector	No. of Days from Previous Inspection	Date of Site Inspection by Qualified Site Inspector	No. of Days from Previous Inspection
8/23/2012		1/3/2013	6
8/30/2012	7	1/10/2013	7
9/6/2012	7	1/17/2013	7
10/5/2012	29	1/25/2013	8
10/11/2012	6	2/7/2013	13
11/15/2012	35	2/15/2013	8
11/29/2012	14	2/21/2013	6
12/6/2012	7	3/7/2013	14
12/13/2012	7		
12/20/2012	7		
12/28/2012	8		

**Acres II Estates, Lemberg Court, SPDES Permit No. NYR10P524, Kiryas Joel**

EPA conducted a reconnaissance inspection of this construction site along with KJ MS4 personnel along with site representatives Mr. Hillel Kahan and Mr. Joel Indig (Project Manager). EPA reviewed the dates of site inspection reports for weekly inspections as required by the CGP. Based on a review of the inspection reports there were gaps of 14 days or greater prior to the inspections on 8/13/12, 9/4/12, 10/15/12, 1/21/13, and 2/18/13 which do not conform to the permit requirements (see highlighted entries in the table below). During the site inspection, EPA also found various construction and post-construction BMP deficiencies.

Table: Acres II Estates Site Inspection Report dates on file conducted by Michael Sendor P.E. July 3, 2012 to March 11, 2013			
Inspection Report Date	No. of Days since Previous Inspection	Inspection Report Date	No. of Days since Previous Inspection
7/3/2012		11/19/2012	7
7/9/2012	6	11/26/2012	7
7/16/2012	7	12/3/2012	7
7/24/2012	8	12/10/2012	7
7/30/2012	6	12/17/2012	7
8/13/2012	14	12/26/2012	9
9/4/2012	22	1/7/2013	12
10/15/2012	41	1/21/2013	14
10/22/2012	7	1/27/2013	6

Table: Acres II Estates Site Inspection Report dates on file conducted by Michael Sendor P.E. July 3, 2012 to March 11, 2013			
Inspection Report Date	No. of Days since Previous Inspection	Inspection Report Date	No. of Days since Previous Inspection
10/29/2012	7	2/18/2013	22
11/7/2012	9	2/26/2013	8
11/12/2012	5	3/4/2013	6
		3/11/2013	7

Cells highlighted in yellow depict gaps of at least 14 days from the previous site inspection.

### **Bakertown Condominiums – (NYR10J085) March 20, 2013**

During the site inspection EPA representatives visually inspected the stormwater retention pond used for post-construction stormwater control at Bakertown Condominiums. Construction activity appeared to be complete; however, this must be confirmed with the MS4 or facility representatives and a NOT filed only if the conditions in Part V of the CGP have been met.

### **Delta Bronze V (Mountain Hill) NYR10J655 (Prag Boulevard)**

On March 21, 2013 EPA along with KJ MS4 personnel visited this site. Currently, there is one lot of this site that is currently under construction. KJ MS4 personnel stated that the development of the road and one of the lots was conducted by Mr. Chaim Werczberger. Mr. Werczberger and his engineer, Leonard Jackson Associates, applied for CGP coverage for the site in September 9, 2005 for a 12.3 acre site that would disturb 6.1 acres. KJ MS4 personnel then explained that individual lots were sold off to other developers that were developing sites less than an acre. KJ MS4 personnel explained that Mr. Werczberger was no longer associated with the site, However, Mr. Werczberger did not file a Notice of Termination for the site, nor did any of the new developers apply for CGP coverage for this site.

The CGP requires that permit coverage be obtained for construction activities involving soil disturbances of one (1) or more acres; including disturbances of less than one acre that are part of a larger common plan of development. The CGP also specifies that termination of coverage can take place when all construction activity identified in the SWPPP has been completed, and all areas of disturbance have achieved final stabilization. Therefore, Delta Bronze V must comply with its existing CGP or the new developer at the site must obtain CGP coverage for this specific site.

### **United Talmudical Academy of Kiryas Joel (UTA of KJ) (Unpermitted NPDES ID NYU400900)**

As described in the attached inspection report for this facility see Attachment I, there was unpermitted construction activity that disturbed greater than 1 acre at this site (Village representatives said that 2 acres were disturbed). Construction activity at this site began prior to July 26, 2012. Disturbed soils, stockpiles, and unfinished building construction existed on the inspection dates of March 20 and 21, 2013 within 100 to 200 feet of the Village's Department of Public Works facility. The construction site is adjacent to Highland Brook and stormwater associated with construction activity discharges to Highland Brook. The Village could not explain why it did not address this non compliant construction



activity that they were aware of. The Village's consultant Mr. MacDonald sent a non-compliance letter dated March 18, 2013 to the DPW with a copy to the UTA of KJ for this construction activity that did not have a SWPPP or Permit. He recommended that construction activity at the site be stopped.

## **E. Good Housekeeping and Pollution Prevention (MCM 6)**

During the Audit, the Village expressed that there are five municipal buildings that are Village operated and maintained, the DPW building, fire house, Drinking Water pump station(s), Drinking Water Treatment Plant, Kinder Park, and the Waste Water Treatment facility. The Village's SWMP Plan does not include a list or inventory of Village owned or operated facilities, or list municipal operations that contribute or potentially contribute pollutants of concern to the MS4.

### Municipal Operations and Facilities Self-Assessments

According to Village representatives, no self-assessments have been completed for any of the municipal facilities. The SWMP Plan does mention municipal facilities that are involved in the municipal operations; however, specific BMPs implemented at municipal facilities, should be included in the SWMP Plan. If stand-alone documents, such as a Best Management Practices (BMP) manual, have been developed for any municipal facility, such documents should be attached to or referenced in the SWMP Plan. Both the 2011 and the 2012 Annual Reports stated that self assessments were performed for over 8 Operations or facilities in the past 3 years.

According to Village representatives, a large plow vehicle is stored inside the DPW garage, as well as the smaller sidewalk plows. The Village utilizes Town of Monroe's facilities to wash its vehicles. There is no written agreement between the Village and Monroe for these services. No power washing of vehicles is conducted by the Village. Fueling for Trucks is conducted at gas stations, and emergency generators are refueled by a contractor. The wastewater treatment plant has an emergency generator that runs on natural gas. The Village street sweeper and Vacuum Truck are stored outside of the DPW garage.

### Parks

According to Village representatives, Kinder Park is the only park owned and operated by the Village, but it is located in the Town of Monroe. Construction of the 7.2 acre park is in the final stages of development, and at the time of the Audit a SWPPP for Kinder Park could not be produced. Don Nichol stated that the Village of Monroe NY MS4 program did not have oversight of the Kinder Park since it was a KJ Village facility that was being overseen by Kiryas Joel, even though the Kinder Park was located within the Village of Monroe and not Kiryas Joel.

During the inspection EPA observed a few areas of concern. There were unstabilized material storage piles located near the drinking water well/pump station, and the dirt road that leads to and across the lake was also in need of stabilization. KJ personnel indicated that in the future they planned on creating a walking path on this dirt road. Also, EPA and KJ MS4 staff could not locate the discharge point or outlet from the retention pond in the western portion of the site.

### Pesticide, Herbicides and Fertilizers

According to Village representatives, pesticides and fertilizers are not used at all within the Village. The SWMP does not have anything documented about pesticides or fertilizers.

### Catch Basin Cleaning

At the time of the Audit, it was unclear what percentages of catch basins were mapped. Village representatives stated that none of the storm drain pipes were mapped and they were unsure of the amount of catch basins in the collection system. Village representatives stated that catch basins are marked annually with a stencil that informs the public that they drain to surface waters.

Village representatives stated that hot spots in the system are cleaned 2-3 times per year but no written routine maintenance schedule or tracking record of catch basin inspections or cleanings was available at the time of inspection. The street cleaning and catch basin maintenance program that was submitted to EPA is incomplete. Jet/Vacuum trucks are used for cleaning, and solid wastes are undocumented and disposed in a designated area in the Town of Monroe. Representatives stated that if the Village experiences a clog in the storm drain, the jet/vacuum truck is used to free the blockage. No written procedure was available at the time of inspection for cleaning blockages in pipes.

### Street Sweeping

During the Audit, Village representatives said that approximately 8-10 miles of Village roads are swept weekly from the spring until the fall as weather permits. According to the Village's submitted Annual Reports, 10 miles of streets were swept during 2011 and 300 miles were swept during 2012. There was no clarification provided for the difference between 2011 and 2012. The Village has one street sweeper that cleans both parking lots and Village streets. According to the annual reports submitted, 20 acres of parking lots were swept in 2011 and 5 acres were swept in 2012. Street sweeper waste is disposed at the Town of Monroe high garage in a designated area. No records are kept for the amount of debris collected or the street sweeping schedule.

### Deicing Activities and Salt Storage

The Village uses a mixture of Calcium Chloride flakes and salt to deice the sidewalks. The mixture is approximately  $\frac{3}{4}$  salt and  $\frac{1}{4}$  calcium chloride. There is no record keeping for the amount used, but it is spread on all sidewalks. After storm events the material is left on the sidewalks and is not picked up by street sweepers. Salt is picked up at the Town of Monroe DPW building and any remaining salt left in the trucks which are stored inside the Village DPW garage overnight. There are no salt storage piles or containers in the Village. The de-icing of roadways in the Village is not done by the Village of Kiryas Joel, but is done by the Town of Monroe.

### Road Maintenance

When the Village conducts road maintenance procedures, the Village does not incorporate stormwater BMPs for street sweeping. However, Village reps stated that sand bags and inlet protection are utilized during curb repairs and painting.

Waste Management

According to Village representatives, yard debris is picked up by contractors. Due to the nature of the community and the multifamily dwellings, all landscaping work is contracted out. These companies are responsible for yard debris pick up and all landscaping activities. Garbage collected within the Village daily and at the village park weekly. There is no program for the collection of household hazardous waste by the Village, however Orange county holds household hazardous waste collection days.

According to Mr. Stern, smaller roadkill is disposed of in the woods by village employees, but in the case of larger roadkill the Town of Monroe will be called to come pick it up.

Training

The Village’s SWMP Plan has in its measurable goals that an employee training program will be in place by January 2005. During the Audit, Village representatives stated that no employee training program exists. The Village submitted a staff training summary which identified names and dates of five trainings from 2011 to 2005. There is record of who attended these trainings or if certifications were received. The Village does not have any program for which new employee trainings are required.

The 2011 Annual Report submitted by the Village listed stormwater management training provided to municipal employees in the last reporting period with a date of 4/14/2010; this date was not listed on the submitted staff training summary. The 2012 Annual Report submitted by the Village listed one stormwater management training provided to municipal employees in the last reporting period with a date of 4/20/2011; this date was not listed on the submitted staff training summary.

Measurable Goals

- Included in SWMP Plan: None, all measurable goals in SWMP ended in 2008
- Listed in Annual Reports: See table below

Measurable Goals for MCM 6 – Good Housekeeping and Pollution Prevention

<u>Year Annual Report Submitted</u>	<b>2011</b>	<b>2012</b>
<b>Measurable goal identified in SWMP Plan for reporting period</b>	Catch basins inspected and cleaned	The Village DPW, which includes garbage truck oversight, has taken on responsibility for “good housekeeping” at all Village Operations, Including truck storage and maintenance facilities.
<b>Overall effectiveness of MCM and/or progress towards achieving measurable goal</b>	In this reporting period scheduled inspections were increased by 50%. Maintenance was performed 50% more often than last year. This resulted in a decrease in deployment of personnel during storm events to perform emergency maintenance.	With singular responsibility, Village Officials have observed a noticeable improvement in cleanliness with garbage pick-up, truck storage and maintenance facilities.
<b>Measurable goal for next reporting cycle?</b>	None Reported	The Village DPW will continue to work on improvement of “housecleaning” at all its Village operations and facilities.

## Field Components

During the Audit, EPA visited two (2) Village of Kiryas Joel municipal facilities, the DPW garage and Kinder Park. Findings and observations for Kinder Park were described previously under Parks.

### Department of Public Works Garage

On March 21, 2013, EPA visited the DPW facility along with Zalman Stern of the Kiryas Joel DPW. The DPW facility was kept in good condition and was very tidy inside. Most vehicles are stored inside and there was no sign of oil leaks or spills on the floor. There were two potential non compliance/areas of concern that need to be addressed. The facility has an oil/water separator that appeared to be clean, but the discharge from the oil water separator is connected into the MS4 and not into the sanitary sewer. The DPW also has a sink that is piped directly outside of the building to the ground. This wastewater could (depending on flow from the sink, weather and soil conditions) flow downhill into the adjacent Highland Brook. The Village of Kiryas Joel does not have a SPDES permit to discharge from its oil/water separator or the sink in the DPW garage.

## **F. Annual Report Review**

As required by Part V.A of the Permit, the Village must conduct an annual evaluation of its program compliance, the appropriateness of its identified BMPs, meeting new permit requirements, and progress towards achieving its identified measurable goals, which must include reducing the discharge of pollutants to the maximum extent practicable (MEP). Where the evaluation shows that the SWMP Plan is not reducing discharges to the MEP, the SWMP Plan shall be revised.

Village representatives stated that Michelle Babcock of Jacobowitz and Gubits, LLP has completed and submitted the last few annual reports. During the Audit, Ms. Babcock was not available to explain her procedures for evaluating progress towards measurable goals, program effectiveness, or information to include in the report.

## **4. POTENTIAL NON-COMPLIANCE ITEMS, AREAS OF CONCERN**

### **A. Stormwater Management Program (SWMP), Management Structure and Effectiveness**

#### **i. Potential Violation**

- a. Part IV.D of the Permit requires all permittees to fully develop and implement their SWMP. At the time of the Audit, the Village failed to update their SWMP to incorporate the 2010 MS4 Permit changes. In accordance with Part X of the Permit, a SWMP needs to include *measurable goals* for each of the BMPs, at the time of the Audit, all measurable goals in the SWMP concluded in 2008.

ii. Area of Concern

- a. In accordance with Part III.B.1 of the Permit, by *January 8, 2013*, covered entities must assess potential sources of discharge of stormwater POC(s), identify potential stormwater pollutant reduction measures, and evaluate their progress in addressing the POC(s). Covered entities must evaluate their SWMP with respect to the MS4's effectiveness in ensuring there is no net increase discharge of stormwater POC(s). At the time of the Audit, the Village had not formally assessed the potential sources of discharge of stormwater POCs such as litter and floatables.

**B. MCMs 2 – Public Involvement/Participation**

i. Potential Violation

- a. In accordance with Part VII.A.2.d of the Permit covered entities must, *prior* to submitting the final annual report to the NYSDEC by June 1 of each reporting year, present the draft annual report in a format that is open to the public, where the public can ask questions about and make comments on the report. This can be done at a public meeting or on the internet, per the requirements listed in Part VII.A.2.d.i of the Permit. According to Village representatives, the draft annual report is not made available to the public prior to submitting the final annual report.

**C. MCM 3 – Illicit Discharge Detection and Elimination**

i. Potential Violations

- a. In accordance with Part VII.A.3.b.ii of the Permit, by March 9, 2010, all covered entities must develop and maintain a map showing the preliminary boundaries of the covered entity's storm sewersheds have been determined using GIS or other tools, even if they extend outside of the urbanized area (to facilitate track down), and additionally designated area within the covered entity's jurisdiction. At the time of the Audit, the Village had not mapped its storm sewersheds.
- b. In accordance with Part VII.A.3.f of the Permit, prohibit, through a law, ordinance, or other regulatory mechanism, *illicit discharges* into the small MS4 and implement appropriate enforcement procedures and actions. At the time of Audit, Village representatives provided Local Law 1 of the year 2008 Chapter 125-13 through Chapter 125-32 entitled "Prohibition of Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems," as its local illicit discharge ordinance. Upon further review, it was determined that Chapters 125-13 through 125-32 were never filed and are not part of the Village Code. Therefore, at the time of the Audit, the Village did not have a local ordinance for illicit discharges as required by the Permit.
- c. Part VII.A.3.g of the Permit requires covered entities to develop and implement a program to detect and address non-stormwater discharges to the small MS4. The program must include, but is not limited to, the following: available equipment; procedures for identifying and locating illicit discharges (track down); procedures for

eliminating illicit discharges; and, procedures for documenting actions. Although the Village's SWMP Plan does include the following information: available equipment for investigating potential illicit discharges; procedures for track down; and, procedures for eliminating illicit discharges, the Village has not adequately implemented its program.

- d. Part VII.A.3.I of the Permit requires covered entities that have been covered for at least three years or more to report on the following: number and percent of outfalls mapped, percent of outfalls for which an outfall reconnaissance inventory has been performed, status of system mapping, etc. During the Audit, Village representatives stated that no formal tracking program exists or that an inventory is taken for outfall inspections.
- e. On numerous occasions the Kiryas Joel Poultry Plant was observed to be discharging process wastewaters, non-allowable non-stormwater into the Kiryas Joel MS4 by EPA. Prior to April 2011 the Kiryas Joel Poultry Processing Plant did not have coverage under the required SPDES Multi-Sector General Permit for Stormwater Associated with Industrial Activity. As recent as February 2013, EPA identified a catch basin on Dinev Road with an odor of poultry waste. The Kiryas Joel MS4 never initiated enforcement action against the Kiryas Joel Poultry Plant, nor did it identify or take action on the large number of illicit discharges into the MS4.

#### **D. MCMs 4 & 5 – Construction and Post Construction**

##### **i. Potential Violations**

As required by Part VII.A.4.a.i of the Permit, all covered entities must develop, implement and enforce a program that provides equivalent protection to the NYSDEC Construction General Permit (CGP). At the time of the Audit, the Village's MS4 program did have the Local law for stormwater management that required sites to obtain CGP coverage, submit an NOI, and receive acknowledgement from the NYSDEC verifying coverage prior to the start of construction activity. Although this ordinance was in place, it was evident during the Audit that it was not being implemented or enforced.

- a. As required by Part VII.A.4.a.ix of the Permit, all covered entities must develop, implement and enforce a program that describes procedures for site inspections and enforcement of erosion and sediment control measures, which includes determining that it is acceptable for the owner or operator of a construction project to submit the Notice of Termination (NOT) to the NYSDEC by performing a final site inspection themselves or by accepting the Qualified Inspector's final inspection certification(s) required by the NYSDEC CGP. The principal executive officer, ranking elected official, or duly authorized representative shall document their determination by signing the "MS4 Acceptance" statement on the NOT. At the time of the Audit, the Village's MS4 did not contain a mechanism that ensured that the "MS4 Acceptance" statement was signed by a qualified individual on the NOT. As evidenced by the inaccurate list of active construction sites, the Village has not been diligent in enforcing the NOT procedures.
- b. As required by Parts VII.A.4.a.vii and VII.A.4.a.ix of the Permit, the covered entity must ensure that individuals performing SWPPP reviews and site inspections are

adequately trained and understand the State and local sediment and erosion control requirements. Adequately trained means receiving inspector training by a NYSDEC sponsored or approved training. At the time of the Audit, the Village's MS4 program did not include a mechanism for tracking or documenting training completed by Engineering Department SWPPP reviewers and inspectors.

- c. As required by Part VII.A.4.a.xii of the Permit, the covered entity shall establish and maintain an inventory of active construction sites, including the location of the site, owner/ operator contact information. At the time of the Audit, it was clear that the list of active construction sites was not properly being maintained due to the abundant discrepancies of active and closed construction sites on the list. The NYSDEC construction stormwater database for Orange County/Kiryas Joel contained several construction sites that were said to have been completed, but no NOT was filed which includes but is not limited to: Village of Kiryas Joel Business Center; KJ Union Free School; Kiryas Joel School; KIRYAS JOEL SIDEWALKS PHASE 7; KIRYAS JOEL SIDEWALKS PHASE 6.
- d. As required by Parts VII.A.4.a.xiii and VII.A.4.a.xiv of the permit, covered entities shall develop (for newly authorized MS4's) record, periodically assess and modify as needed measurable goals; and select and appropriate construction stormwater BMPs and measurable goals to ensure the reduction of all POCs in stormwater discharges to the MEP. At the time of the Audit, the Village's SWMP Plan had all measurable goals identified as being completed in 2008. Upon review onsite, EPA representatives concluded that not all of the expired measurable goals were completed and the stormwater management plan had not been assessed and/or modified in recent years.
- e. As required by Part VII.A.4.b.ii of the Permit, covered entities are required to report on the number and type of enforcement actions at construction sites. Based on review of annual reports and documentation of stop-work orders provided by the Village during the Audit and the Annual Reports for 2011 and 2012, which indicated that two (2) stop-work orders had been issued, the data provided do not accurately reflect the actual enforcement activity of the Village during those years. It was determined that no stop-work orders were actually issued during 2011 & 2012.
- f. As required by Parts VII.A.5.e.iv and VII.A.5.e.v of the Permit, covered entities are required to report on the number and type of post-construction stormwater management practices inspected and maintained. Based on review of the Annual Reports and discussion with Village representatives during the Audit, the number of post-construction controls inspected and maintained has not been accurately reported. The Village should track all inspection and maintenance activities associated with all post-construction BMPs so that it may accurately report post-construction activities in its annual reports.

ii. Areas of Concern

- a. Part VII.A.4.a.vii of the Permit requires that covered entities develop, implement and enforce a program that describes procedures for SWPPP review with consideration of potential water quality impacts and review of individual SWPPPs to ensure consistency with State and local sediment and erosion control requirements. The Village's SWMP Plan should be updated to clearly indicate that procedures for SWPPP review. If a checklist will be used by SWPPP reviewers, it should also be referenced in the SWMP Plan.
- b. The Village's SWMP Plan should be updated to include greater detail with regard to the Village's procedures for conducting inspections at construction sites. The SWMP Plan should include a minimum frequency at which construction sites are inspected by the Village and should include the Village's protocol for inspecting sites after rain events. If a checklist is used by Village inspectors, the SWMP Plan should reference the checklist so that it may be easily identifiable.

**E. MCM 6 – Good Housekeeping and Pollution Prevention**

i. Potential Violations

- a. Part VII.A.6.a.ii of the Permit requires covered entities to, at a minimum frequency of once every three years, perform and document a self assessment of all municipal operations addressed by the SWMP to: determine the source of pollutants potentially generated by the covered entity's operations and facilities; and identify the municipal operations and facilities that will be addressed by the pollution prevention and good housekeeping program, if it is not done already. At the time of the Audit, the Village had never performed a self assessment of its operations or facilities.
- b. Part VIII.A.6.a.iii.vi of the Permit requires that the covered entities should include an employee pollution prevention and good housekeeping training program and ensure that staff receives and utilize training. At the time of the Audit, there was no training program to ensure staff received necessary training.

ii. Areas of Concern

- a. During the field portion of the Audit, EPA identified a sink in the back of the DPW building reportedly used for hand-washing that directly drains outside onto the ground. As discussed with Village representatives during the Audit, the Village should must connect the discharge into the sanitary sewer line or obtain an individual SPDES Permit for the discharge.
- b. During the field portion of the Audit, EPA identified floor drains in the DPW building that drain to an oil/water separator. The discharge of the oil water separator goes into an MS4 outfall which is an illegal connection, and an illicit discharge. During the Audit, EPA representatives explained that discharge needed to be piped into the sanitary sewer plant for treatment or an individual SPDES Permit obtained for the discharge.



- c. On February 21, 2013 EPA visited catch basins on Dinev Road during a separate inspection from the Audit, and observed a strong odor that, based on previous EPA visits to the poultry plant, appeared to be a poultry plant related waste/wastewater discharge in the catch basin. During the March 20 and 21, 2013 Audit, Kiryas Joel MS4 and Kiryas Joel Poultry personnel indicated that the trucks associated with Kiryas Joel Poultry would no longer be parked on Dinev Road which would prevent any leakage or other material from these trucks entering the catch basins on Dinev Road. Trucks will now be parked across Dinev Court from the Kiryas Joel Poultry facility.

## **F. Annual Reporting**

### **i. Potential Violations**

- a. Part V.D of the Permit states, the MCC form, provided by the Department, certifies that all applicable conditions of Parts IV, VII, VIII and IX of this SPDES General Permit are being developed, implemented and complied with. Furthermore, Part V.D states, if compliance with any requirement cannot be certified to on the MCC form, a complete explanation with a description of corrective measures must be included as requested on the MCC form. Failure to submit a complete annual report (Part V.C) and a complete MCC form shall constitute a permit violation. During the Audit, EPA representatives highlighted numerous discrepancies in the information reported in the 2011 and 2012 Annual Reports.

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**ATTACHMENT I**