

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 9
700 Delaware Avenue, Buffalo, NY 14209
P: (716) 851-7190 | F: (716) 851-7296
www.dec.ny.gov

June 5, 2024

Niagara Falls Water Board
5815 Buffalo Avenue
Niagara Falls, New York 14304

Dear Niagara Falls Water Board:

Order on Consent R9-20230411-13

Enclosed please find your copy of the executed Order on Consent noted above.
Please retain this for your records.

Very truly yours,


Maureen A. Brady,
Regional Attorney 

MAB:ef
Enclosure



Department of
Environmental
Conservation

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Violation of Article 17 of the
Environmental Conservation Law and Title 6, Part 750, of the
New York Codes, Rules and Regulations by:

Niagara Falls Water Board
5815 Buffalo Avenue
Niagara Falls, New York 14304

ORDER ON CONSENT
File No. 23-05
R9-20230411-13

Respondent

WHEREAS:

1. The Department of Environmental Conservation ("DEC" or "Department") is a Department of the State of New York ("State") with jurisdiction to enforce the environmental laws of the State pursuant to Section 3-0302 of the Environmental Conservation Law ("ECL"), Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State ("6 NYCRR") and Orders issued thereunder.
2. The Department has jurisdiction over the abatement and prevention of pollution of State waters pursuant to ECL §17-0101, *et seq.*, and 6 NYCRR Part 750, *et seq.* This jurisdiction authorizes the Department to regulate the discharge of pollutants from point sources into the waters of the State in conformity with the Federal Clean Water Act, 33 U.S.C. 1251, *et seq.*
3. Pursuant to its authority to protect the waters of the State, the Department administers the State Pollutant Discharge Elimination System Permit ("SPDES") program. In general, the SPDES program prohibits any discharge of pollutants to the waters of the State without a SPDES permit establishing pollutant limitations, certain reporting obligations, and treatment requirements.
4. The Niagara Falls Water Board ("Respondent") is a municipal public benefit corporation which owns, operates, maintains control of and/or otherwise has responsibility for, various sanitary sewer systems, sanitary outfalls, and combined sewer outfalls associated with its wastewater treatment plant located in the City of Niagara Falls, New York ("Facility").
5. Respondent is subject to Article 17 of the ECL and its implementing regulations found in 6 NYCRR Part 750, *et seq.*, which govern the control and prevention of water pollution.

6. Respondent is also subject to the conditions and limitations imposed under SPDES Permit No. NY0026336, issued pursuant to ECL Article 17, Title 8, and 6 NYCRR 750 ("SPDES Permit"). The SPDES Permit was issued with an effective date of November 1, 2013 and a five-year permit term. A timely and sufficient renewal application for the permit was received April 17, 2018 and the permit is currently extended pursuant to the State Administrative Procedures Act as noted in the Department's June 7, 2018 acknowledgement letter.

7. Following the discharge of black water effluent related to treatment difficulties for the current physical chemical wastewater treatment plant, Respondent evaluated conversion of the Facility to a conventional biological treatment plant. While the engineering evaluation endorsed the conversion for improved treatment, no commitment to a conversion was established pending further evaluation of costs, treatment capabilities, and viable funding.

8. Respondent and DEC recognize the conversion of the Facility into a conventional biological treatment plant offers significant benefits in reduced chemical use, improved wastewater treatment, improved water quality, and addresses potential effluent concerns for turbidity and contrast to receiving waters.

9. DEC recognizes the commitment to the conversion is a substantial undertaking for the Respondent given existing debt service and potential ability to continue to utilize the current treatment process after considering a modified or reissued SPDES permit. Therefore, evaluation of alternatives in the biological treatment plant conversion report is reasonable.

10. Under provisions of 6 NYCRR Part 750-2.1(b), the Department has determined that modification of the SPDES permit is required to meet water quality standards and compliance with ECL and will undertake a modification of the SPDES permit. The schedule of compliance and interim effluent limitations represent abatement actions for the permittee during permit modification and to implement a biological treatment plant conversion or other improvements to meet water quality standards.

Facts

11. The Facility provides physical/chemical treatment of municipal and industrial wastewaters using activated carbon filtration. The Facility was designed and built prior to the adoption of industrial pre-treatment standards by the US Environmental Protection Agency.

12. The Facility discharges effluent through Outfall 001 to the Niagara River, which is a Class A-Special water body of the State.

13. Respondent's discharges from Outfall 001 into the Niagara River sometimes may cause a substantial visible contrast/turbidity to natural conditions in the

Niagara River and contravene the State's narrative water quality standard for turbidity. The discharges are the direct result of the design and limitations of the facility, and not due to negligence or willfulness on behalf of Respondents.

Provisions of Law

14. Pursuant to ECL §17-0501, it is unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the Department pursuant to section 17-0301.

15. Pursuant to 6 NYCRR 703.2, the narrative water quality standard for turbidity applicable to a Class A-Special water body is "No increase that will cause a substantial visible contrast to natural conditions."

16. ECL §71-1929 imposes a penalty not to exceed Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per day for each alleged violation described in paragraph 13 and also provides for injunctive relief.

Violations

17. Certain of Respondent's discharges have caused and sometimes may continue to cause a substantial visible contrast/turbidity to natural conditions and are in violation of ECL §17-0501 and 6 NYCRR 703.2.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. CIVIL PENALTY

- A. With respect to the Respondent's violations listed in this Order, the Respondent agrees to a total penalty in the amount of Fifteen Thousand Dollars (\$15,000), with seven thousand five hundred dollars (\$7,500) payable to the Department. The civil penalty shall be paid when Respondent signs this Order and returns it to the Department by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line> or by check made payable to the order of the "New York State Department of Environmental Conservation," with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check, which shall be sent to the Department of Environmental Conservation, Division of Management and Budget Services, 625 Broadway, 10th Floor, Albany, NY 12233-4900.
- B. Suspended Penalty.
The remaining penalty amount shall be suspended, and shall not be payable provided that Respondent fully complies with the requirements of this Order, including all incorporated Appendices and Attachments. If, in the

Department's sole discretion, Respondent violates any term of this Order, including the Schedule of Compliance, the whole amount of the suspended penalty, or any portion thereof, shall be due from Respondent within 30 days of receiving written notice from the Department that penalties are due.

This Order on Consent, along with any applicable submissions shall be sent to the Department of Environmental Conservation, Office of General Counsel, 700 Delaware Ave., Buffalo, NY 14209, attention: Maureen Brady.

This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, their trustees, officers, employees, successors and assigns for the above-referenced violations.

II. COMPLIANCE

Respondent shall be immediately bound as provided by this Order and attached Schedule of Compliance, attached as "Schedule A." Respondent shall implement all actions set forth in Schedule A by the dates indicated therein. Schedule A, and any approved plan(s) or schedules developed pursuant to Schedule A, are hereby incorporated into and made an enforceable part of this Order.

III. STIPULATED PENALTIES

A. Except as otherwise provided herein, if Respondent fails to comply with any terms of this Order, including any approved plans or schedules incorporated into this Order, the Department shall be entitled to judgment against Respondent. Respondent hereby consents to entry of judgment in New York State Supreme Court for a stipulated penalty for each day of such violation of this Order. The stipulated penalty shall become due and payable, and may be entered as a judgment, upon thirty (30) days' notice to Respondent.

Said stipulated penalties shall be in the following amounts:

1. For days 1 to 14, the penalty shall be \$250.00 per day;
2. For days 15 to 30, the penalty shall be \$500.00 per day;
3. For days 31 to the date the corrective action has been completed, the penalty shall be \$1,000.00 per day.

B. Any stipulated penalties assessed pursuant to this paragraph shall be separate, and in addition to, any suspended penalties assessed pursuant to paragraph I above.

IV. SUBMISSIONS

A. The Respondent shall send all documentation and submissions required by this Order in electronic format (unless paper copies are required) to the Department at the following address, unless otherwise noted. All submissions must include a certification that they are in compliance with the requirements of this order:

Regional Water Engineer	Director
NYSDEC Region 9	Bureau of Water Compliance
700 Delaware Avenue	625 Broadway
Buffalo, New York 14209	Albany, NY 12233
damianos.skaros@dec.ny.gov	edward.hampston@dec.ny.gov

B. For purposes of this Order only, any document or plan which is required to be submitted to DEC pursuant to this Order must be approvable by the Department upon submission or with only "minimal revision" in response to Department comments. Consistent with 6 NYCRR Section 750-1.2(8), minimal revision shall mean the document plan can be revised and resubmitted to the Department within 60 days of notification by the Department that the revisions are necessary. The Department shall notify the Respondent in writing of its approval or disapproval of each submission and the reasons for any disapproval. All Department approved submissions shall be incorporated into and become an enforceable part of the Order and Respondent shall implement them in accordance with all approved schedules and terms.

C. The Department may request that Respondent modify and/or expand a submission if the Department determines that further work is necessary.

D. Stipulated penalties pursuant to Section III above, based on the failure to submit an approvable submittal, shall not begin to accrue unless 60 days have elapsed after Respondent has received the Department's comments on a submittal, and Respondent has not submitted an approvable revised document. It is expressly understood that stipulated penalties begin to accrue upon day 61 after Respondent has received the Department's comments on a submittal, if Respondent does not submit an approvable revised submittal by that date or such date as modified by DEC.

V. ACCESS

For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to the Facility or records owned, operated, controlled or maintained by Respondent in order for Department staff or its agents to inspect and/or perform any necessary tests, related to the requirements of this Order, during reasonable hours. No prior notification to the Respondent of site inspections is required.

VI. RELEASE, REOPENER AND RESERVATION OF RIGHTS

A. This Order settles only all State claims for civil and administrative penalties concerning the alleged violations described in Paragraph 13 of this Order against Respondent and its successors (including successors in title) and assigns.

B. Nothing contained in this Order shall be construed as a release or waiver by the Department of its rights to: (1) seek penalties and other relief for any criminal liability for any violations listed in this Order; (2) seek stipulated penalties and entry of judgment as provided by Paragraph III of this Order; (3) reallege the violations listed in this Order to obtain injunctive relief or damages in support of natural resource damage claims; (4) seek injunctive relief to abate any violation of law or this Order; and (5) seek to modify, suspend or revoke any Department issued permit.

C. Nothing contained in this Order shall be construed as a release or waiver of Respondent's rights to oppose and defend against injunctive relief, imposition of penalties, damages or any other imposition of liability by the Department. Nothing contained in this Order shall be construed as a waiver by Respondent of its rights to seek a modification of its Permit.

D. Except as provided hereunder, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State and local laws, regulations and permits; and Respondent's compliance with this Order shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Department does not, by its consent to the issuance of this Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Order will result in compliance with provisions of any federal, State or local laws, regulations or permits.

E. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge or notice and the Department reserves the right to require Respondent to take any additional measures deemed necessary by the Department to protect human health or the environment, to exercise its authorities under law to protect human health and the environment or to otherwise require compliance with the law.

VII. FAILURE, DEFAULT AND VIOLATION OF ORDER

Respondent's failure to comply fully and in a timely manner with any provision, term or condition of this Order shall constitute a default and failure to perform an obligation under this Order and under the ECL.

VIII. INDEMNIFICATION

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, actions, damages and costs of every nature and description resulting from the Respondent's fulfillment or attempted fulfillment of this Order.

XVII. FORCE MAJEURE

If Respondent cannot reasonably comply with a deadline or requirement of this Order, because of an act of God, war, pandemic, strike, riot, catastrophe, , or other condition which is not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

XI. DISPUTE RESOLUTION

A. Any dispute that arises between the Department and Respondent under this Order, shall, in the first instance, be the subject of informal negotiations between the Department and Respondent for a period of up to 20 working days from the time notice of a dispute is received by any of the parties. The period of negotiations may be extended by written agreement between the Department and Respondent. In the event that the parties are unable to resolve a dispute by informal negotiations, Respondent may request to meet with the Deputy Commissioner, Water Resources ("Deputy Commissioner") in order to discuss the Department's objections/determinations. At this meeting Respondent shall be given an opportunity to present its responses to the Department's objections/determinations, and the Deputy Commissioner shall have the authority to modify and/or withdraw such objections/determinations. After the Deputy Commissioner makes his/her decision(s) Respondent shall either (a) within sixty (60) days of receipt of written notice of the Deputy Commissioner's determinations, commence a proceeding pursuant to Article 78 of the CPLR (the Deputy Commissioner's decision(s) shall be deemed to be final agency action for the purposes of such a proceeding) or (b) notify the Department that it intends to comply with the Deputy Commissioner's decision(s).

B. Stipulated penalties pursuant to Section III of this Order shall accrue during the term of Dispute Resolution for matters subject to dispute resolution hereunder, but payment shall be stayed pending resolution of the dispute. If Respondent does not prevail on the disputed issue, stipulated penalties may be assessed and paid as provided by Paragraph III of this Order, from the date the violation first occurred. Further, the invocation of Dispute Resolution shall not, by itself, extend, postpone or affect in any way any obligation of Respondent under this Order, including Schedule A, unless and until a final resolution of the dispute so provides.

XII. BINDING EFFECT

This Order is binding on the Respondent, heirs, successors, employees and all persons, firms, or corporations acting under or for it.

XIII. MODIFICATIONS AND EXTENSIONS

A. No change or modification of this Order shall be effective unless the modification is done in writing and signed by both the Respondent and the Commissioner or his/her designee.

B. The dates in Schedule A include time for the Water Board to take steps to secure funding. No modification to this Order shall be considered based on lack of funding until after submission of the Preliminary Engineering Report required by Schedule A or until 12 months have elapsed from the execution date of this Order, whichever comes sooner, at which time the Water Board may seek a modification, which request for modification shall not be unreasonably denied by the DEC. The DEC intends to make reasonable efforts to assist the Water Board to secure funding to complete the work required by this Order. Any application to modify this Order because of its inability to secure funding shall require submission by the Water Board of a report by the Authority's rate consultants as well as documentation demonstrating the Water Board's good-faith efforts to secure funding. Modifications which may be granted may include, among other things, revisions to the scope of work required pursuant to Schedule A, and/or extensions of deadlines to complete the work. Modifications pursuant to this paragraph shall require the approval of the Commissioner of the Department or his/her designee.

C. Respondent may request a modification to the Order based on substantial revenue decline or changed wastewater characteristics due to loss of industrial users or economic downturn, which request will not be unreasonably declined by the Department.

D. If the Department receives a written request from the Respondent which (a) would extend an item(s) in Respondent's Compliance Schedule; (b) the extension does not exceed a cumulative of six months from the original milestone date(s); (c) the request is made before the milestone date and (d) sets forth good cause for the extension, the Department may extend the time frame requested by the issuance of a letter signed by the original signatory or designee of the signatory.

XIV. USE OF ORDER BY THIRD PARTIES

The existence of this Order, and Respondent's consent thereto, and compliance herewith, shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

XV. ENTIRE ORDER

The provisions of this Order and the attachments hereto constitute the complete and entire Order issued to the Respondent concerning the resolution of the violations set forth in this Order. No term, condition, understanding or agreement purporting to

modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondents shall be construed as relieving Respondent of its obligation to obtain such formal approvals as may be required by this Order.

XVII. GENERAL PROVISIONS

A. All references to "days" herein are to calendar days unless otherwise specified.

B. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

C. This Order and its Appendices shall apply to, and be binding upon the parties, their officers, agents, servants, employees, successors and assigns, and each of them, and upon all persons, firms and corporations acting under, through or for, in active concert or participation with, the parties.

D. Respondent shall certify in writing, within 30 days of completion of each milestone or requirement set forth in Schedule A.

XVIII. EFFECTIVE DATE AND TERMINATION OF THIS ORDER

A. The effective date of this Order ("EDO") is the date that the Commissioner or his designee signs it. The Department will provide Respondent (or Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or his designee signs it.

B. This Order shall be deemed completely satisfied and shall terminate when each of the following conditions has been fully satisfied: (1) Respondent has paid any civil penalty as set forth in Section I above, and all other outstanding penalties assessed hereunder; (2) Respondent has certified in writing the completion of each Schedule A item requiring an approvable submission to the Department and DEC has approved said certifications in writing; and 3) 6 months after the facility with improvements required pursuant to this Order is placed in operation and Respondent requests and receives a closure letter from the Department.

-Signature Pages Follow-

DATED: Buffalo, New York

May 28, 2024

Sean Mahar, Interim Commissioner
New York State Department of
Environmental Conservation

By: Julie M. Barrett O'Neill
Julie Barrett-O'Neill
Regional Director

CONSENT BY NIAGARA FALLS WATER BOARD

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing as provided by law, and agrees to be bound by the provisions, terms and conditions contained therein.

By: 
 Nicholas J. Forster

Title: Chairman, Niagara Falls Water Board

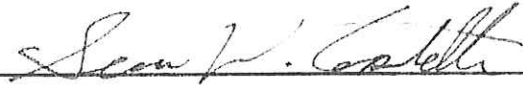
Date: May 20th 2024

STATE OF NEW YORK)

) ss:

COUNTY OF NIAGARA)

On the 20th day of May, in the year 2024, before me, the undersigned, personally appeared NICHOLAS J. FORSTER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public
 SEAN W. COSTELLO
 Notary Public, State of New York
 Qualified in Erie County
 No. 02C06226871
 My Commission Expires Aug. 23, 2026

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Niagara Falls Water Board

SCHEDULE A
Order on Consent R9-20230411-13

Respondent shall, on or before the dates indicated:

Item	Date
<p>UPDATED PRELIMINARY ENGINEERING REPORT</p> <p>The respondent shall submit an approvable¹ updated preliminary engineering report (PER) for the <i>Evaluation of the Conversion and Modification of the Niagara Falls Water Board Wastewater Treatment Plant into a Biological Treatment Process or Alternative Improvements to Meet Water Quality Standards</i>. The PER must meet the requirements of the most recent version of the EFC/DEC Engineering Report Outline (https://www.dec.ny.gov/permits/6054.html). The report shall be prepared and signed by a Professional Engineer licensed to practice engineering in New York State and describe treatment alternatives or other control mechanisms (i.e., Pretreatment Program / Sewer Use Law) that may be used to address and establish the final effluent limitations for:</p> <ul style="list-style-type: none"> • BODs • Phenolics, Total • Dieldrin • Chlorine, Total Residual • Sulfides, Total <p>The updated PER shall identify the respondent's selected alternative. The alternative selected must either constitute a full or partial conversion of the secondary treatment process utilized at the Facility to a biological treatment process or otherwise make such capital or operational improvements as are required to abate discharges from the wastewater treatment plant that may cause a substantial visible contrast/turbidity in the receiving water.</p> <p>The PER shall include an assessment of the selected alternative as well as a review of other alternatives and their projected costs/benefits. It will outline Respondent's proposed strategy for procurement of any proprietary technology, together with preliminary site plans, property acquisition needs, survey, process flow diagrams, piping and instrumentation diagrams, any permit issues identified and the status of their resolution, tie ins to existing processes should be identified, construction sequencing, selection of major equipment/components, along with a discussion of the basic site civil, mechanical, electrical, and instrumentation and control considerations, and a cost estimate. The PER shall</p>	<p>EDO + 21 Months</p>

¹ 6 NYCRR 750 1.2 (a)(8).

<p>describe Respondent's proposed plan for treatment during construction, as well as Respondent's proposed interim effluent limits. Additionally, the PER shall discuss phasing of construction to continue to maximize treatment of wastewater during implementation or construction of the selected alternative. The PER shall detail the proposed final effluent limits to which the selected alternative is designed to comply.</p>	
<p><u>REQUEST FOR PROPOSAL OF ENGINEERING DESIGN SERVICES</u> The respondent shall solicit and obtain engineering design services to complete design of selected alternative chosen in the PER</p>	DEC Approval of PER + 6 Months
<p><u>NOTICE TO PROCEED DESIGN START</u></p>	DEC Approval of PER + 9 Months
<p><u>DESIGN COMPLETION</u> The respondent shall submit approvable Design Documents including a Basis of Design Report (BODR), Engineering Plans, Specifications, and Construction Schedule for the selected alternative.</p>	Notice to Proceed Design Start + 18 Months
<p><u>NOTICE TO PROCEED TO CONSTRUCTION</u></p>	DEC Approval of Design + 6 Months
<p><u>COMPLETE CONSTRUCTION</u> The respondent shall provide a Certificate of Completion² to the Department that the disposal system has been fully completed in accordance with the approved Design Documents.</p>	DEC Approval of Design + 48 Months
<p><u>COMMENCE FINAL OPERATION</u></p>	180 Days Following Submission of Certification of Completion of Construction Completion.

² 6 NYCRR 750-2.10 (c).

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Niagara Falls Water Board

SCHEDULE B (if applicable)
Interim Limits
Order on Consent R9-20230411-13

INTERIM EFFLUENT LIMITS FOR PARAMETERS SUBJECT TO THIS SCHEDULE OF COMPLIANCE											
PARAMETER		EFFLUENT LIMITATION					MONITORING REQUIREMENTS				Notes
		Type	Limit	Units	Limit	Units	Sample Frequency	Sample Type	Location		
									Inf.	Eff.	
BOD ₅		Monthly Average	Monitor	mg/L		lbs/d	1/day	24-hr. Comp.	X	X	1
BOD ₅		7-Day Average	Monitor	mg/L		lbs/d	1/day	24-hr. Comp.		X	1
BOD ₅ , Percent Removal		Daily Minimum	Monitor	Percent			1/day	Calculated		X	1,2
Phenolics, Total		Daily Max	Monitor	ug/L	61	lbs/d	2/month	24-hr. Comp.	-	X	1
Dieldrin		Monthly Average	Monitor	ug/L	-	-	1/month	24-hr. Comp.	-	X	1
Total Sulfide		Daily Max	Monitor	ug/L	-	-	1/month	24-hr. Comp.	-	X	1
Total Residual Chlorine		Daily Max	3.0	mg/L	-	-	6/day	Grab	-	X	1,3
Notes:	1. Interim limitations expire at commence final operation plus 90 days.										
	2. Effluent shall not exceed 15% of influent concentration values for BOD ₅ . During periods of wet weather which causes plant flows over the permitted flow for a calendar day, the BOD ₅ influent and effluent results for that day shall not be used to Calculate 30-day arithmetic mean percent removal limitations. However, all concentrations shall be used in the calculation of the arithmetic mean value concentration limitations. All other effluent limitations remain in full effect.										
	3. Effluent limitation for Total Residual Chlorine is only applicable if chlorine is used for disinfection or other treatment processes.										