

FOR DISCUSSION PURPOSES ONLY  
DRAFT 3/05/04

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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ATLANTIC STATES LEGAL FOUNDATION, STATE  
OF NEW YORK and JOHN P. CAHILL, as  
Commissioner of the New York State Department  
of Environmental Conservation,  
88-CV-0066

Plaintiffs,

-vs-

JUDGE McAVOY

THE ONONDAGA COUNTY DEPARTMENT OF  
DRAINAGE AND SANITATION and ONONDAGA  
COUNTY, NEW YORK,

Defendants.

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**STIPULATION AND ORDER AMENDING  
THE AMENDED CONSENT JUDGMENT**

The State of New York and Erin M. Crotty, as Commissioner of Environmental Conservation (collectively, the "State"), Onondaga County and the Onondaga County Department of Water Environment Protection (formerly known as the Department of Drainage and Sanitation)(collectively, the "County"), and the Atlantic States Legal Foundation ("ASLF") agree as follows:

**WHEREAS**, this action under the federal Clean Water Act and the New York

State Environmental Conservation Law, article 17, was resolved by an amended consent judgment (the "ACJ") entered on January 20, 1998; and

**WHEREAS,** the ACJ requires the County to implement various upgrades and other measures that are needed to bring the County's effluent discharges into compliance with the State's effluent limitations and water quality standards; and

**WHEREAS,** the ACJ contains, *inter alia*, compliance schedules for meeting effluent limitations for ammonia and phosphorus discharged from the County's Metropolitan Sewage Treatment facility ("Metro") and the ACJ establishes major and minor milestone dates by which various upgrades, including construction related activities, are to be commenced and completed for Metro and the County's combined sewer overflow points ("CSOs"); and

**WHEREAS,** the County is subject to stipulated penalties and other remedies in the event that it fails to satisfy any of its obligations under the ACJ, including the obligation to comply with effluent limitation compliance dates and milestone dates; and

**WHEREAS,** the ACJ was amended by stipulation and order entered May 1, 1998, revising the major milestone dates for the construction and operation of the Franklin Floatables Control Facility and Conveyance Project and the Maltbie Street Floatables Control Facility Project; and

**WHEREAS,** overall, the County has made and continues to be make significant

progress in implementing the terms of the ACJ; and

**WHEREAS,** the State has extended some minor milestone dates consistent with its authority under the ACJ; and

**WHEREAS,** changing effluent limitation compliance schedules, major milestone dates and the ACJ mandated upgrades requires Court approval; and

**WHEREAS,** some elements of the upgrades and other remedial measures required by the ACJ have not or will not be implemented by the County in accordance with the applicable major milestone compliance date; and

**WHEREAS,** some elements of the upgrades and other remedial measures that the ACJ requires the County to implement need to be modified in order to better achieve their intended purpose and such modification would require minor adjustments in the effluent limitation compliance schedule; and

**WHEREAS,** the parties to this lawsuit have agreed upon the terms and conditions for amending and modifying the ACJ, which terms and conditions are set forth below.

**NOW THEREFORE,** it is **ORDERED** that the ACJ, as amended by the stipulation and order entered May 1, 1998, is further amended and modified as follows:

1. Except as amended and modified herein, the ACJ as amended by the stipulation and order entered May 1, 1998 is hereby ratified and reaffirmed and shall remain in full force and effect.

## Harbor Brook CSO Abatement Project

2. The ACJ provides as follows:

Harbor Brook In-Water System. The CSO abatement proposed on Harbor Brook will use an in-lake technology called the EquiFlow system. The intent of this project is to be a demonstration project to determine the technical applicability of its use in this location. The maximum term of the initial project is 15 years. This system will provide an opportunity to demonstrate abatement of CSO, urban storm water, and non-point pollution through a combination of floatable solids entrapment, in-water storage, pumpback, and treatment at METRO. The in-water system will also include the construction of a floatable solids netting device to remove CSO and stormwater floatables from Harbor Brook before they reach the EquiFlow system. The design basis for the demonstration facility is one-half of the one year design storm which equates to a storage volume of 13 million gallons.

Five years after commencement of operation, a technical evaluation shall be completed and submitted to the DEC for review and approval. If the project is not deemed technically acceptable, the County will proceed with the design and construction of the Delaware and State Fair RTFs at a construction schedule to be proposed by the County to DEC.

If DEC approves the project for the full fifteen years interim period then at the end of the fifteen years the County may propose a final alternative subject to applicable SEQRA and permitting requirements.

ACJ, Appendix B, Section III, paragraph 10. As a CSO Interim Project, the County was obligated to complete construction and begin operation by July 1, 2002. ACJ, Appendix B, Section IV, paragraph 1.

3. As of the date of this Stipulation, the County has neither commenced nor completed construction of this project.

4. The County represents that the construction of this project is not feasible because the sediments in Harbor Brook upon which the project would be constructed are contaminated with hazardous wastes and substances. As an alternative, the County proposes to develop a final facilities plan for the abatement of CSOs into Harbor Brook, subject to State review and approval, and to construct and commence operation of the facilities by January 1, 2012.

5. The Harbor Brook In-Water Project is an environmental benefit that the County agreed to provide in settlement of the State's claims against it. Thus, the project is a material element of the ACJ. Furthermore, the County was aware of the contamination of the sediments in Harbor Brook at the time it agreed to implement the Harbor Brook In-Water Project in 1997. Constructing and commencing to operate a CSO abatement facility in January 2012, as the County now proposes, does not compensate the public for the environmental benefit lost as a consequence of the County's failure to construct and operate the Harbor Brook CSO abatement program from July 1, 2002 to January 1, 2012.

6. Consequently, the ACJ is hereby amended and modified as follows: (a) the County shall on or before December 31, 2004 submit a Facilities Plan for the abatement of CSOs into Harbor Brook to the Department of Environmental Conservation for review and approval. The Facilities Plan shall include a proposed schedule for the design and construction of the project including construction phasing

if planned and proposed minor and major milestone compliance dates. The County shall complete the project in its entirety and commence operation no later than January 1, 2012; (b) the County shall pay to the State as a penalty the sum of ----- and, in addition shall implement an environmental benefit project [describe project], subject to State approval, at a cost of no less than -----; and (c) the foregoing obligations shall be in lieu of the obligations set forth in the ACJ, Appendix B, section III, paragraph 10.

**Midland Avenue CSO Regional Treatment Facility and Conveyances Project**

7. The ACJ provides as follows:

Midland Avenue Conveyances Project: The service area for this facility encompasses the majority of the combined sewer area on the southern end of the City of Syracuse. The pipelines and regulators will be sized on the basis of a one-year storm. Even above the one-year storm, the collection system will intercept a high percentage of the volume associated with these precipitation events.

Midland Avenue Regional Treatment Facility ("RTF") Project:  
The Midland Avenue RTF Project will be located near Oxford Street and Onondaga Creek. The proposed treatment facility will include coarse screening in front of the facilities pump station wet well. Pumps will be used to lift the flow from the CSO transmission pipelines up to the vortex device where floatables and gross solids will be removed. The flow will then proceed to the disinfection tank, where

it will be disinfected with either sodium hypochlorite or another disinfectant recommended after completion of the Newell Street CSO disinfection demonstration project. All treatment and transmission processes will be sized to accommodate the one-year storm at this facility. Concentrated solids from the RTF will be discharged back into the Main Interceptor Sewer (MIS) for treatment at METRO. This facility incorporates an interconnection to the MIS to capture overflows from the MIS during intense rainfall events. The only time that the interconnection will be active is during MIS surcharging conditions, thereby ensuring that the more concentrated "first flush" of pollutants is retained within the MIS.

ACJ, Appendix B, Section III, paragraphs 1, 2. As Major CSO Projects, the County was required to complete construction and begin operation of the Midland Avenue RTF Project by January 1, 2007. ACJ, Appendix B, Section IV, paragraph 5.

8. The County is currently in violation of various minor milestone compliance dates with respect to this project and it is anticipated by all parties that the County will not satisfy the January 1, 2007 major milestone compliance date for completing construction and commencing operation of this project. The County's failure to meet the minor milestone dates and its anticipated failure to meet the major milestone date is due, at least in part, to an ongoing dispute

between the County of Onondaga and the City of Syracuse concerning title to real property. The County plans to construct the Midland RTF on property that, in part, the County took by eminent domain from the City of Syracuse. The County's condemnation of this property was the subject of a third-party action filed by the County before this Court which concluded with the entry on January 5, 2004 of a "Final Judgment In Third-Party Action With Reservation Of The Right To Appeal."

The City of Syracuse filed a notice of appeal, dated January 29, 2004, from the January 5, 2004 Final Judgment.

9. It is the desire of the parties that if the dispute between the County and the City of Syracuse is resolved with finality in the near future, that the parties will agree upon and submit to this Court for approval a further amendment to the ACJ that will establish a new major milestone date for this project and will resolve all related issues, including stipulated penalties.

10. In light of the unresolved nature of the County's on-going violations of the ACJ and the related on-going litigation between the County and the City, the State reserves all claims and remedies available to it under the ACJ with respect to the County's obligation to construct and operate the Midland Avenue RTF in accordance with the milestone schedule, and the County reserves all defenses available to it under the ACJ.

#### **Ammonia/Phosphorus Effluent Reduction Compliance**



Schedule and METRO Construction Compliance Schedule

11. The ACJ provides as follows with respect to Stage II ammonia effluent compliance:

Beginning no later than May 1, 2004, the County shall not exceed an ammonia effluent limit measured as ammonia ("NH<sub>3</sub>") of 2 milligrams per liter ("mg/l") from June 1 through October 31, and 4 mg/l from November 1 through May 31, measured as a thirty day average.

ACJ, paragraph 7.

12. The ACJ provides as follows with respect to Stage III ammonia effluent compliance:

Beginning no later than December 1, 2012, the County shall: A. not exceed an ammonia effluent limit of 1.2 mg/l measured as ammonia ("NH<sub>3</sub>") from June 1 through October 31, and 2.4 mg/l from November 1 through May 31, measured as a thirty day average,

ACJ, paragraph 9.A.

13. The ACJ provides as follows with respect to Stage II phosphorus effluent compliance:

Beginning no later than April 1, 2006, the County shall not exceed a phosphorus effluent limit of 0.12 mg/l, measured as a twelve month rolling average.

ACJ, paragraph 8.

14. The ACJ further provides, in pertinent part, that the County shall (a) complete construction of the Full Scale Ammonia Removal Project, which is designed to meet the Stage II ammonia effluent limits, by the major milestone date of November 1, 2003, ACJ, Appendix A, Section II, paragraph 7; (b) complete construction and commence operation of the Phosphorus Removal/ Effluent Filtration Project, which is designed to meet the Stage II phosphorus effluent limits, by the major milestone date of April 1, 2005, ACJ, Appendix A, Section II, paragraph 12; and (c) complete construction and commence full operation of the projects that will meet Stage III effluent limitations for both ammonia and phosphorus by the major milestone date of June 1, 2012, ACJ, Appendix A, Section II, paragraph 21.

15. In the process of developing preliminary designs for Stage II and Stage III ammonia removal facilities, and Stage II phosphorus removal facility, the County concluded that the goals of the ACJ would be advanced and a significant savings in design, construction and operation costs realized if the construction of these facilities were to be consolidated. The County further concluded that if construction were consolidated it would be able to meet the Stage III ammonia effluent limit and the Stage II phosphorus effluent limit by May 1, 2005, well ahead of the milestone schedule. The County therefore proceeded to construct

the projects under a consolidated design plan. As a result, the Stage III ammonia limit will be met seven years and seven months ahead of schedule (the ACJ currently sets a major milestone date of December 1, 2012 for Stage III ammonia removal) and the Stage II phosphorus limit will be met eleven months ahead of schedule (the ACJ currently sets a major milestone date of April 1, 2006). 16.

The State has reviewed the County's proposal and has concluded that consolidating the design and construction of these facilities will significantly advance the overall goals of the ACJ and is therefore in the public interest. ASLF concurs in the State's conclusion.

17. Consequently, the ACJ is hereby amended and modified as follows: the Stage III ammonia effluent limit which the County is currently obligated to meet by December 1, 2012, as provided in the ACJ, paragraph 9.A, is revised to May 1, 2005; and (d) the Stage II phosphorus limit that the County is currently obligated to meet by April 1, 2006, as provided in the ACJ, paragraph 8, is revised to May 1, 2005.

#### **Onondaga Creek Floatables Control Facility**

18. The ACJ provides as follows:

Onondaga Creek Floatables Control Facility (Boom with Collection Structure). The Onondaga Creek facility will be located downstream of all CSOs which discharge into the creek and above the Inner Harbor

area. The best location appears to be in Onondaga Creek just downstream of the Kirkpatrick Street bridge and just upstream of the Inner Harbor.

The County will implement the plan once developed and approved.

ACJ, Appendix B, Section III, paragraph 15. As an interim CSO project, the County was required to complete construction and begin operation by July 1, 2002. ACJ, Appendix B, Section IV, paragraph 1.

19. The County has concluded, after attempting to design an effective control boom and collection structure, including the review of data obtained from the use of a pilot mechanism, that such a structure would not be effective given the flow regime in Onondaga Creek. The State concurs in this conclusion. The County proposes, as an alternative, the use of a skimmer boat and boom to collect floatables. The County has in fact used a skimmer boat since the latter half of 2002 to collect floatables and has found this system to be effective.

20. Consequently, the ACJ is hereby amended and modified as follows: the County shall prevent or minimize the entry of floatables from Onondaga Creek into the Inner Harbor by using a skimmer boat to collect such floatables. The County shall operate the skimmer boat from May 1 through November 1 of each year, unless the County concludes and the State agrees that such operation is precluded by weather conditions, until all CSOs discharging into Onondaga Creek have been upgraded as provided in the ACJ.

### Kirkpatrick Street Pumping Station Upgrade

21. The ACJ provides as follows:

Kirkpatrick Street Pumping Station Upgrade. The Kirkpatrick Street Pumping Station is the only large pump station in the combined sewer system. This facility was constructed in 1973 to pump flow from the Hiawatha trunk sewer into the MIS. A comprehensive wastewater facilities plan and sewer system evaluation survey will be developed for the proposed upgrade of this facility to address the wastewater transportation needs of the Hiawatha trunk sewer and Oil City redevelopment areas. The pump station discharge will be removed from the main interceptor sewer and redirected to the headworks at METRO.

Additional measures will include refitting the pump station with new pumps, drives, and controllers, as well as modifications at CSO 075 as specified in the SPDES permit to eliminate discharges for storms up to the one-year storm.

ACJ, Appendix B, Section III, paragraph 12. As an interim CSO project, the County was required to complete construction and begin operation by July 1, 2002. ACJ, Appendix B, Section IV, paragraph 1.

22. The County represents that it significantly expanded the scope of this

project in order to better achieve its purpose under the ACJ to insure maximum flow of wet weather combined sewage to Metro for treatment while minimizing overflows in the combined sewer system at an increased cost to the County of over six million dollars. The State and ASLF concur. As a result of the added work as well as encountering unexpected site conditions (subsurface obstructions and highly saline groundwater) which required additional work, the project was not completed until November 1, 2003, sixteen months behind the major milestone schedule.

23. Consequently, the ACJ is amended and modified as follows: the major milestone compliance date applicable to the Kirkpatrick Street Pumping Station Upgrade is hereby extended, *nunc pro tunc*, from July 1, 2002 to November 1, 2003.

#### Oxygenation Demonstration Project

24. The ACJ provides as follows:

The County shall develop and implement an oxygenation demonstration project in Onondaga Lake ("Oxygenation Demonstration Project") to determine whether lake-wide oxygenation can be used as an interim measure pending compliance by the County with the Stage III requirements set forth in paragraph 9 or the fulfillment of the obligations set forth in paragraph 11. The goals of the project will

be (a) to determine and report on the feasibility and suitability of implementing a lake-wide system to supplement point and non-point source controls for the attainment and maintenance of in-lake dissolved oxygen standards, as an interim measure; and (b) to prevent oxygen depletion in the epilimnion, in the fall, after lake turnover and the associated migration of aquatic species from the Lake. To achieve compliance with this requirement the County shall meet the compliance dates set forth in the Oxygenation Demonstration Project Compliance Schedule, which is attached as Appendix C, and hereby made an enforceable part of this Amended Consent Judgment. The final report on feasibility shall be submitted by the County in approvable form and content on or before April 1, 2002, and if lake-wide oxygenation is viable, the report will include a plan for such implementation. If lake-wide oxygenation is determined to be viable, DEC in consultation with EPA will endeavor to develop a long-term implementation plan and to identify any parties that may be liable for the implementation of such a plan.

ACJ, paragraph 15. The ACJ, Appendix C, provides further that:

I. The County shall implement an in-lake oxygenation demonstration project. The goal of the project will be:

a. to determine and report on the feasibility and suitability of implementing a lake-wide system to supplement point and non-point source controls for the attainment and maintenance of in-lake dissolved oxygen standards; and

b. to prevent oxygen depletion in the epilimnion, in the fall, after turnover and the associated migration of aquatic species from the Lake.

II. A technical work group which includes representatives from DEC, EPA and outside experts (selected by DEC in consultation with EPA), will be established to provide peer review and develop the experimental design and demonstration project work plan by October 1, 1998. The County shall begin implementation in accordance with the work plan by May 1, 1999, which date shall be a Major milestone compliance date within the meaning of paragraph 28 of the Amended Consent Judgment.

A technical report shall be generated to determine whether implementing lake-wide aeration is a feasible interim remedy. If lake-wide oxygenation is viable, the technical report will include a plan for implementation, including:

- the recommended full-scale aeration program;
- the recommended implementation schedule; and
- the estimated costs

The report on the feasibility must be submitted to the DEC for review by December 1, 2002, which date shall be a Major milestone compliance date within the meaning of paragraph 28 of the Amended Consent Judgment.

25. Although initial efforts were made to design the oxygenation demonstration project, the parties concluded that the design of the project should await the generation of additional surface water monitoring data pursuant to the ACJ, paragraphs 16-19. The requisite monitoring data has been generated and the



United States Army Corps of Engineers through its consultant is developing the preliminary experimental design plan. The parties anticipate the preliminary design plan will be completed by August 1, 2004.

26. Consequently, the ACJ is amended and modified as follows: the County shall develop a work plan subject to State approval and thereafter shall begin implementation of the oxygenation demonstration project in accordance with the approved work plan by April 1, 2005, which date shall be a major milestone compliance date within the meaning of paragraph 28 of the ACJ. The County shall generate a technical report which will discuss and present recommendations as to the feasibility of implementing lake-wide aeration as an interim remedy. If lake-wide oxygenation is viable, the technical report will include a plan for implementation, including:

- the recommended full-scale aeration program;
- the recommended implementation schedule; and
- the estimated costs

The County shall submit the report to the DEC for review and approval by September 1, 2008, which date shall be a major milestone compliance date within the meaning of paragraph 28 of the ACJ.

**Newell Street RTF Testing of Disinfection Technologies**

27. The ACJ provides as follows:

Newell RTF. The Newell Street project will involve the testing of alternative disinfection technologies, and thereby sets the basis for the disinfection technology to be used at subsequent RTF facilities.

ACJ, Appendix B, Section III, paragraph 9. As an interim CSO project, the County was obligated to complete work by the major milestone date of July 1, 2002.

ACJ, Appendix B, Section IV, paragraph 1.

28. The Newell Street Disinfection Report submitted by the County on July 31, 2001 was not approved by the State because the report was based on literature review rather than site specific flow data. (The necessary flow regimes at the Newell Street RTF did not occur during the study period.)

29. The State agrees to accept the National Water Environment Research Foundation (NWERF) Evaluation of Alternative Disinfection Technologies report in lieu of the Newell Street Disinfection Report. The County shall submit the NWERF report to the State on or before July 1, 2004.

#### Advanced Phosphorus Removal Pilot Project

30. The ACJ provides as follows:

Advanced Phosphorus Removal Pilot Project - The County will conduct a pilot-scale demonstration project to evaluate the feasibility of new and innovative technology for removal of phosphorus from the Metro effluent. The goal of this pilot project is to achieve the requirements of Stage III phosphorus effluent limits in paragraph

9.B of the Amended Consent Judgment.

ACJ, Appendix A, Section I, paragraph 5. The ACJ further requires the County to conclude operation of the Advanced Phosphorus Removal Demonstration Project by the minor milestone date of April 1, 2007 and requires the County to submit a report to DEC detailing the results the Advanced Phosphorus Removal Pilot Project by the major milestone date of July 1, 2007. ACJ, Appendix A, Section II, paragraphs 15, 16.

31. The County completed operation of the Advanced Phosphorus Removal Demonstration Project on -----, 2002.

32. Consequently, the ACJ is amended and modified as follows: the County shall submit a report to DEC, for review and approval, detailing the results of the Advanced Phosphorus Removal Pilot Project by the major milestone date of July 1, 2004.

**SO AGREED:**

DATED: \_\_\_\_\_

ELIOT SPITZER  
ATTORNEY GENERAL OF THE  
STATE OF NEW YORK

\_\_\_\_\_  
By: NORMAN SPIEGEL, ASSISTANT  
ATTORNEY GENERAL, of Counsel  
Bar Roll Number 102652  
Attorney for the plaintiffs,

STATE OF NEW YORK and the  
COMMISSIONER of ENVIRONMENTAL  
CONSERVATION

DATED: \_\_\_\_\_ ALLEN LIPPES & SHONN

\_\_\_\_\_  
BY: RICHARD J. LIPPES, Attorney for  
plaintiff, ATLANTIC STATES LEGAL  
FOUNDATION

DATED: \_\_\_\_\_ ANTHONY P. RIVIZZIGNO, COUNTY ATTORNEY

COUNTY BY: \_\_\_\_\_  
ATTORNEY for defendants, ONONDAGA  
COUNTY and the ONONDAGA COUNTY  
DEPARTMENT of WATER ENVIRONMENT PROTECTION

SO ORDERED: \_\_\_\_\_ DATED: \_\_\_\_\_

THOMAS J. McAVOY, U.S.D.J.