

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of Articles 17 of the Environmental Conservation Law and Part 750 *et seq.*, of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR);

ORDER ON
CONSENT

-by-

Case No.
R7-202100304-6

County of Onondaga, New York

Respondent.

Jurisdiction

1. The Department of Environmental Conservation ("Department" or "DEC") is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State, pursuant to the Environmental Conservation Law ("ECL"), Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York ("NYCRR"), and Orders issued thereunder.
2. The Department has jurisdiction over the abatement and prevention of pollution to the waters of the State pursuant to Article 17 of the ECL and 6 NYCRR Part 750, *et seq.* This jurisdiction also authorizes DEC, as a State agency with an approved program per §§ 318, 402 and 405 of the federal Clean Water Act ("CWA"), 33 U.S.C. §1251, *et seq.*, to regulate the discharge of pollutants from point sources into the waters of the State in conformity with the CWA.
3. The County of Onondaga ("Respondent" or "Onondaga") is a municipal corporation organized and existing under the laws of the State of New York with municipal offices located in the City of Syracuse, Onondaga County, New York. Respondent is a "person" as defined in ECL § 17-0105(1) and in 6 NYCRR 750-1.2(66).

Law, Regulation and Guidance Applicable to CSO Long Term Control Plans

4. Pursuant to its authority to protect the waters of the State, the Department administers the State Pollutant Discharge Elimination System ("SPDES") permit program, ECL §17-0801, *et seq.* In general, the SPDES program prohibits any discharge of pollutants to the waters of the State without a permit establishing pollutant limitations and treatment requirements. Thus, SPDES permits set certain effluent limitation parameters ("parameters"), determined according to ECL §17-0809 and 6 NYCRR §750-1.11, in order to avoid contravention of mandated water pollution control requirements and water quality standards ("WQS"). Those conditions address not only the allowable range of parameters for discharge of pollutants to the waters of the State, but also the manner in which the permittee is to operate, maintain,

5. Combined sewer overflows (“CSOs”) are wet weather discharges from a Combined Sewer System (“CSS”) of untreated domestic sewage, and industrial wastewaters, combined with stormwater and/or snow melt, at a point prior to reaching the Waste Water Treatment Plant (“WWTP”). CSOs are point sources subject to SPDES permit requirements including both technology-based and water quality-based requirements of the CWA, ECL Article 17, and 6 NYCRR Parts 703 and 750.
6. On April 19, 1994, the U.S. Environmental Protection Agency (EPA) officially noticed the *Combined Sewer Overflow (CSO) Control Policy*, 59 Fed. Reg. 18688 (“*CSO Control Policy*”), to establish a consistent national approach for controlling discharges from all CSOs to the waters of the United States. The *CSO Control Policy* provides guidance to national and state permittees and permitting authorities on the implementation of the CWA with regard to CSOs, including its “nine minimum controls” and the development and implementation of Long Term Control Plans (“LTCPs”), which include measures to comply with the CWA including attainment of WQS.
7. To help permittees, SPDES permitting and water quality authorities implement the provisions of the *CSO Control Policy*, EPA issued several guidance documents including, without limitation: *Combined Sewer Overflows—Guidance for Long-Term Control Plan* (EPA 1995a), *Combined Sewer Overflows—Guidance for Screening and Ranking* (EPA, 1995c), *Combined Sewer Overflows—Guidance for Monitoring and Modeling* (EPA, 1995d), *Combined Sewer Overflows—Guidance for Financial Capability Assessment* (EPA, 1995e), *Combined Sewer Overflows—Guidance for Permit Writers* (EPA 1995g), *Combined Sewer Overflows—Guidance for Monitoring and Modeling* (USEPA 832-B-99-002 (January 1999)), *Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews* (EPA-833-R-01-002 (July 31, 2001)), and *CSO Post Construction Compliance Monitoring Guidance* (USEPA 833-K-11-001 (May 2012)).
8. On December 15, 2000, amendments to §402 the CWA (known as the Wet Weather Water Quality Act of 2000) were enacted. These amendments require that all permits or orders for CSO discharges, issued pursuant to the CWA after December 21, 2000, conform to the *CSO Control Policy*. Pursuant to 33 U.S.C. §1342(q)(1) [CWA §402(q)(1)],

[e]ach permit, order, or decree issued pursuant to this chapter after December 21, 2000, for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 (in this subsection referred to as the ‘CSO control policy’).

9. ECL § 17-0815(7) authorizes the Department to include in SPDES permits any provisions necessary to meet the requirements of the federal CWA. This includes the CSO requirements contained at § 402(q)(1) of the federal CWA. Section 402(q)(1) of the CWA and ECL § 17-0807(4) provide that SPDES permits or orders for CSOs require an LTCP to address CSOs.

SPDES Permit and Federal Consent Decree

10. Onondaga owns the Metropolitan Syracuse Wastewater Treatment Plant (“Facility”) located

at 650 Hiawatha Boulevard West, Syracuse, Onondaga County, New York and applied for a SPDES Discharge permit for the Facility. The Department issued the current SPDES Discharge Permit NY0027081, effective date July 1, 2017, expiration date June 30, 2022 (“Permit”). The Permit and its predecessors allow discharges from designated outfalls into Onondaga Lake, a class C water. In addition, the Permit lists numerous CSO outfalls into the following waters: Harbor Brook, Onondaga Creek, Teall Brook and Ley Creek, all class B or class C waters.

11. Atlantic States Legal Foundation, Inc. (“ASLF”) is a not for profit corporation of the State of New York with offices at 658 West Onondaga Street in Syracuse, Onondaga County, NY. ASLF’s stated mission is to develop and promote innovative and practical ways to preserve the environment, green the urban core, and protect water resources. In 1988, ASLF commenced litigation against the Respondent in the federal district court for the northern district of New York—case number 88-CV-066. The complaint alleged that Respondent violated the CWA in the discharge of sewage into Onondaga Lake through various CSOs. DEC intervened into the litigation.
12. DEC, ASLF and Respondent entered into a federal Amended Consent Judgment (“ACJ”), effective January 20, 1998 (and modified May 1998, December 2006, April 2008 and November 2009) concerning Respondent’s CSO abatement program. The ACJ governs the Respondent’s obligations for design and construction of facilities required to abate CSOs and preserve WQS. The CSO abatement program required by the ACJ is consistent with the LTCP required under the EPA CSO Control Policy.
13. As part of the phased LTCP implementation schedule for Respondent, a CSO abatement implementation schedule was set forth in the November 2009 modification of the ACJ (“ACJ 4th”). The ACJ 4th requires the Respondent to implement specified engineering upgrades in accordance with stipulated milestone dates. Additionally, Respondent is required to submit an annual report to DEC regarding all Permit CSOs, including, among other requirements, the following:
 - a. Water quality monitoring in all CSO receiving waters,
 - b. Evaluation of compliance with CSO control implementation requirements,
 - c. Analysis of measures taken to reduce CSOs and address any WQS violations,
 - d. A stepped program to attain capture for treatment or elimination, within the meaning of the *CSO Control Policy*, of no less than 95% by volume, on a system wide annual average basis of the combined sewage generated during precipitation events beginning no later than December 31, 2018.
14. Upon completion of the joint milestones set forth in the ACJ 4th and Permit, the ACJ 4th provides the mechanism by which any of the litigants may petition the federal court for an Order deeming that Respondent’s CSO related obligations in the ACJ 4th have been satisfied.
15. Pursuant to the terms of the ACJ 4th and Permit, Respondent has submitted and DEC has approved all required reports through 2018. Those reports indicate that there are WQS violations for, *inter alia*, bacteria in Harbor Brook, Onondaga Creek, and Ley Creek. These violations occur during CSO and wet weather events and during dry weather periods.

16. Harbor Brook, Onondaga Creek and Ley Creek also experience phosphorus and ammonia WQS violations, and are Impaired Waters under the Federal Clean Water Act Section 303 (d), per the Final 2016 NYS Section 303(d) List, July 2017.
17. Respondent's annual reports have included calibrated CSS hydraulic modeling which estimates 97.9% capture by volume, on a system-wide annual average basis, of the combined sewage generated for the 1991 typical year rainfall as of December 31, 2019. The 2019 annual report was approved by DEC on October 21, 2020.
18. Respondent has completed ACJ 4th and Permit required engineering CSO upgrades by stipulated milestone dates.
19. The Respondent submitted a draft LTCP to the Department on October 11, 2019, which the Department reviewed and provided comments on August 28, 2020, and Respondent is currently addressing changes and formulating responses to the comments. The Respondent continues to advance select CSO abatement projects. The draft LTCP contains descriptions of CSO abatement projects in accordance with EPA's *CSO Control Policy*. In this regard, the parties have continued discussions regarding such projects, the coordination of CSO long-term control planning, the analysis of water quality data in CSO receiving waters, achieving compliance with WQS, further guiding the development of an approvable LTCP sufficient to meet WQS, and, if and when appropriate, development of a Use Attainability Analysis ("UAA") for CSO receiving waters consisting of Harbor Brook, Onondaga Creek, and Ley Creek.
20. To that end, the Respondent and Department have entered into a Memorandum of Understanding, dated October 15, 2020, ("MOU") which establishes a general approach for development of UAA reports for CSO receiving waters consisting of Harbor Brook, Onondaga Creek, and Ley Creek ("UAA Reports"). As set forth in the MOU, the general approach by the parties shall be accomplished pursuant to the "Regulatory Framework for State WQS Review."

Violations

21. ECL § 17-0501 makes it unlawful for any person to discharge pollutants to the waters of the State that cause or contribute to a violation of WQS. The Department determined that Respondent's CSO discharges and Respondent infrastructure have caused or contributed to the violation of WQS for bacteria in the receiving waters in violation of ECL § 17-0501.
22. Pursuant to the Final 2016 NYS Section 303(d) List (July 2017), the Department determined that Respondent's CSO discharges have caused or contributed to violations of WQS in the receiving waters in violation of ECL § 17 -0501.
23. Pursuant to ECL § 71-1929, a person who violates any of the provisions of, or who fails to perform any duty imposed by, ECL Article 17 or the rules or regulations of the Department promulgated pursuant thereto, or the terms of any permit or order issued there under, shall, *inter alia*, be liable for a penalty not to exceed thirty-seven thousand, five-hundred dollars (\$37,500) per day for each violation, and may also be enjoined from conducting such

activity.

Respondent's Consent to Administrative Order

24. In order to address the violations noted above, Respondent agrees to enter into this Order on Consent, which requires compliance with the Approved Interim CSO Corrective Measure Plan ("Plan"), incorporated into and made enforceable under the terms of this Order on Consent as Schedule A.
25. Compliance with this Order on Consent requires the Respondent to, without limitation:
 - a. pay a civil penalty;
 - b. comply with the Plan, which requires, among other things, the design and implementation of additional CSO abatement projects to be completed over the next five (5) years and preparation of an approvable disinfection report; and
 - c. submit an approvable revised LTCP, together with UAA Reports for Harbor Brook, Onondaga Creek, and Ley Creek, within four (4) years and six (6) months from the effective date of this Order in accordance with the parties Schedule of Deliverables, incorporated into and made enforceable under the terms of this Order on Consent as Schedule B.
26. Upon termination of this Order, Respondent's CSO discharges shall not cause or contribute to violations of applicable water quality requirements. Nevertheless, this does not preclude the Respondent from seeking a variance from a WQBEL (6NYCRR 702.17) or a WQS revision (40 CFR 131.10(g)), or preclude the County from operating CSOs in accordance with a lawfully issued variance (6NYCRR 702.17), or in compliance with a lawfully revised water quality standard.
27. In settlement of the above-stated violations, the Department and Respondent have consented to the execution of this Order on Consent as evidenced by the signature of their representatives, requiring Respondent to comply with all the terms, provisions and conditions of this Order on Consent, without trial or adjudication of any issues of fact or law.
28. This Order on Consent shall be effective upon ENTRY WITH NOTICE of a federal decree dismissing, terminating or discontinuing the federal action in the federal district court for the northern district of New York (Case No. 88-CV-066).

THEREFORE, having considered this matter, and the Respondent having been duly advised, **IT IS HEREBY ORDERED:**

I. EFFECT ON PREVIOUS ORDERS

The requirements set forth in this Order on Consent are in addition to, and do not affect any requirements set forth in, any Orders on Consent executed between the Department and the Respondent prior to the effective date of this Order on Consent.

II. CIVIL PENALTY

- a. With respect to the violations set forth above, the Respondent is hereby assessed a civil penalty in the amount of One Thousand and no/100 Dollars (\$1,000.00) which shall be payable to the Department within thirty (30) days.
- b. The Payable penalty of One Thousand and no/100 Dollars (\$1,000.00) shall be paid directly to the NYS DEC, Division of Management and Budget Services, 625 Broadway, Albany, New York 12201 according to the attached invoice.

III. IMPLEMENTATION OF INTERIM CSO CORRECTIVE MEASURE PLAN

Upon the effective date of this Order, Respondent shall comply with the Plan and fund, plan, design, and implement the limited Respondent owned/managed/funded CSO abatement projects set forth therein. As further detailed in the Plan, Respondent has committed to preparing and submitting a disinfection report. All work under the Plan, unless specific elsewhere, shall be completed within five (5) years of the effective date of this Order.

IV. COMPLIANCE WITH THE SCHEDULE OF DELIVERABLES

Upon the effective date of this Order, the Parties shall comply with their respective obligations as set forth in the Schedule of Deliverables. As further detailed in the Schedule of Deliverables, within four (4) years and six (6) months of the effective date of this Order, Respondent shall submit an approvable revised LTCP. Concurrent therewith, the County will submit UAA Reports pursuant to 40 CFR § 131.10(g) for the segments of Harbor Brook, Onondaga Creek, and Ley Creek impacted by CSOs and areas impacted downstream of such CSO discharges.

V. WRITTEN SUBMITTALS TO THE DEPARTMENT OF PLANS, REPORTS AND OTHER DELIVERABLES

- a. In order to be deemed in compliance with this Order, all submittals of written work plans, reports and other deliverables ("deliverables") required under this Order on Consent shall be:
 - i. (i) materially complete, (ii) submitted by the deadline set forth, and (iii) under the signature and seal of a professional engineer currently licensed to practice in New York State unless otherwise specifically agreed to in writing, which agreement shall not be unreasonably withheld;
 - ii. in accordance with (i) the specified project descriptions and schedules set forth herein, (ii) the CWA and its relevant and applicable regulations, (iii) the *CSO Control Policy* as adopted at 33 U.S.C. §1342(q)(1) (and EPA guidance documents in Paragraph 7 herein), (iv) the ECL and its relevant and applicable regulations in 6 NYCRR Parts 750 and 703, and (v) the Respondent's SPDES Permit; and, if the deliverable pertains to an initial submittal that involves only "minimal revision" in response to Department comments, then the initial submittal shall be "approvable" in accordance with 6 NYCRR Part 750-1.2(8).

- b. After review of any deliverable, the Department may in writing: i) approve the submittal or ii) provide comments to be resolved, explained and/or addressed in a single revised submittal that shall warrant final approval by the Department under the terms of this Order on Consent and pursuant to the requirements of the CWA and its applicable regulations, the *CSO Control Policy* as adopted at 33 U.S.C. §1342(q)(1) and the ECL and its applicable regulations in 6 NYCRR Parts 750 and 703.
- i. If the submittal is approved, it will thereby be incorporated into and made an enforceable part of this Order on Consent. Respondent shall take all actions required by the operative terms of the deliverable, in accordance with the schedules and requirements therein, as approved. Any violation of the operative terms of the approved submission shall be a violation of the terms of this Order on Consent by Respondent.
 - ii. If the submittal is the subject of a comment letter from the Department, Respondent shall respond to all comments and correct all deficiencies in the submittal in accordance with the Department's comments and resubmit the deliverable for final approval, within a timeframe determined by the Department. If the resubmittal is approved, the approved submittal shall be incorporated and made an enforceable part of this Order, and Respondent shall proceed, as set forth in the preceding Subparagraph V.b.i herein.
 - iii. If a re-submitted deliverable is disapproved in whole or in part, (i) the Respondent shall be in violation of this Order on Consent, (ii) the Department may again demand that Respondent correct any deficiencies in accordance with this Subparagraph, and (iii) the disapproved resubmittal shall be subject to the accrual of and the Department's right to seek stipulated penalties as provided in Paragraph IX herein.
- c. Upon approval by the Department, Respondent shall implement and take all actions required by the deliverables.

VI. NOTIFICATION OF NON-COMPLIANCE

If Respondent fails to comply with any requirement of this Order on Consent, including the Plan and Schedule of Deliverables, Respondent shall notify the Department of such failure and the likely duration of the period of noncompliance in writing within ten (10) working days of the day Respondent first becomes aware of the noncompliance, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize it ("Notification of Non-compliance"). If the cause of the noncompliance cannot be fully explained at the time the report is due, Respondent shall include a statement to that effect in the report. Respondent shall immediately investigate to determine the cause of the noncompliance and then shall submit an amendment to the report, including a full explanation of the cause of the noncompliance, within thirty (30) days of the day Respondent becomes aware of the cause of the noncompliance. A Notification of Non-compliance shall not be required in the event of a delay as set forth

in Paragraph VII or a force majeure event as defined in Paragraph XII, in which case Respondent shall comply with the applicable force majeure notice provisions set forth in Paragraph XII(b).

VII. PERMITS AND APPROVALS

Where any compliance obligation under this Order on Consent requires Respondent to obtain federal, state, or local permits or approvals, or triggers review under the State Environmental Quality Review Act ("SEQRA"), Respondent shall submit timely and complete applications, or timely perform the SEQRA review, and take all other actions necessary to obtain all such permits or approvals or to ensure compliance with SEQRA. Respondent may seek relief under the provisions of Paragraph XII for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval or the completion of a SEQRA review required to fulfill such obligation, including any delay in obtaining EPA approval of UAA Reports, if Respondent has submitted timely and complete applications and have taken all other actions required by applicable law to obtain all such permits or approvals and to ensure compliance with SEQRA. The reporting requirements of this Order on Consent do not relieve Respondent of any reporting obligations required by the CWA or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or requirement, including Respondent's Permit. In accordance with the MOU and Schedule of Deliverables, the Department agrees to cooperate and coordinate with Respondent in the development of UAA Reports and in requesting EPA approval of such UAA Reports.

VIII. COMMUNICATIONS

- a. All correspondence, plans, reports, and any other written deliverables submitted to the Department under the terms and requirements of this Order on Consent shall be sent to the following contacts or their successors at the Department:

Original to:
Regional Water Engineer
NYSDEC
615 Erie Blvd West
Syracuse, NY 13204

With one copy to:
Regional Engineer
NYSDEC
615 Erie Blvd West
Syracuse, NY 13204

Director – Bureau of Water
Compliance
NYSDEC
625 Broadway, 4th Floor
Albany, NY 12233-3506

and

Regional Attorney, Office of General Counsel
NYSDEC
615 Erie Blvd West
Syracuse, NY 13204

Copies of all correspondence from the Department to Respondent required under this Order on Consent shall be provided to the following or their successors:

Original to:
Commissioner
OCDWEP
650 Hiawatha Blvd West
Syracuse, NY 13204

With one copy to:
Onondaga County Law Department
421 Montgomery Street, 10th Fl.
Syracuse, NY 13202

- b. Any party may change its designee(s) under this Paragraph upon written notice to the other parties.
- c. Notices and submissions provided pursuant to this Paragraph shall be deemed effective upon receipt, unless otherwise provided in this Order on Consent or by mutual agreement of the Parties in writing.
- d. Each notice, report or submission submitted by Respondent under this Order on Consent shall be signed by an official of Respondent and include the following certification:
 - i. I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

IX. STIPULATED PENALTIES

- a. In the event Respondent fails to satisfy any Plan deliverables or other deadline set forth in this Order on Consent, or violates any term of this Order on Consent, the Department shall be entitled to judgment against Respondent. Respondent hereby consents to the entry of judgment against it in New York State Supreme Court, for a stipulated penalty encompassing each day of such violation of this Order. Said stipulated penalties shall be in the following amounts:

<u>PERIOD OF NON-COMPLIANCE</u>	<u>PENALTY PER DAY</u>
i. 1st Day through 30th Day	\$ 500/day
ii. 31st Day through 60th Day	\$ 1,000/day
iii. Each Day beyond the 60th Day	\$ 1,500/day

- b. Any stipulated penalty judgment shall become due and payable, and may be entered, upon ten (10) calendar days' notice to Respondent.
- c. These stipulated penalties shall be in addition to the civil penalty already assessed by the Department as set forth in Paragraph II, above.
- d. All stipulated penalties shall begin to accrue on the day after the performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order on Consent, except that when two or more violations are based upon the same noncompliance, the higher stipulated penalty shall apply.
- e. Payment of Stipulated Penalties to the Department.
- i. Payment. Stipulated penalties payable to the Department shall be paid by certified or cashier's check in the amount due, payable to the NYS DEC, Division of Management and Budget Services, 625 Broadway, Albany, New York 12201. The DEC case number appearing on the first page of this Order on Consent shall be endorsed on the face of the check.
 - ii. Late Payment. Should Respondent fail to pay stipulated penalties and accrued interest payable to the Department in accordance with the terms of this Order on Consent, the Department shall be entitled to collect interest and late payment costs and fees, together with the costs (including attorneys' fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.
 - iii. Respondent's payment of stipulated penalties under this Paragraph shall be in addition to any other rights or remedies available to the Department by reason of Respondent's failure to comply with any requirement of this Order on Consent or applicable law.

X. DEFAULT

- a. The failure of Respondent to comply fully and/or in a timely fashion with any provision of this Order on Consent shall constitute a default and a failure to perform an obligation under this Order and under the ECL by the Respondent, and shall constitute sufficient grounds for revocation pursuant to 6 NYCRR § 621.13 of any permit, license, certification or approval issued to the Respondent by the Department unless said permit, license, certification or approval is completely unrelated to the facilities, requirements and obligations addressed in this Order on Consent.
- b. The penalties assessed in this Order, set forth in Paragraph II or Paragraph IX, if any, constitute a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in this Order on Consent may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest and a charge to cover the cost of collecting the debt) or referral to the New York State Department of Taxation and Finance, which may offset by the unpaid penalty amount any monies that may be owed to Respondent by the State of New York.

XI. BINDING EFFECT

- a. This Order shall be deemed to bind according to its terms Respondent, its respective officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for Respondent, including, without limitation, any subsequent operator of the facilities that are the subject of the Permit (“permitted facilities”), who may carry on activities now conducted by the Respondent at the permitted facilities, and any successor in title to the respective permitted facilities or to any interest therein.
- b. Respondent shall provide a copy of this Order on Consent (including any submissions incorporated herein) to any contractor or subcontractor hired to perform work required under this Order on Consent and shall require compliance with this Order on Consent as a term of any contract for performance of work under this Order on Consent. Respondent shall nonetheless be responsible for ensuring that all work performed under this Order on Consent is in compliance with the terms of this Order.

XII. FORCE MAJEURE

- a. Respondent shall not be in default of the provisions of this Order on Consent if its non-compliance is directly attributable to an Act of God, war, insurrection, terrorism, strike, judicial injunction, catastrophic condition, or other circumstance that is entirely beyond its control and which Respondent’s due diligence could not prevent (“force majeure”). If such a force majeure event occurs, Respondent shall be entitled to an extension of the applicable Schedule of Deliverables and/or Plan deadlines(s), limited to the period of time caused by such event that placed compliance with a provision of this Order beyond Respondent’s control.
- b. As a condition precedent to obtaining a schedule extension under this provision, Respondent shall notify the Department in writing that a force majeure event has

occurred, no later than fourteen (14) days after the date Respondent knew or should have known of the occurrence of any force majeure event. Respondent shall include in such notice the measures taken and to be taken by the Respondent to avoid or mitigate the delay, and may request an extension or modification of the applicable deadline(s) under this Order equal to the period of delay directly attributable to the force majeure event. Failure to give such notice within such fourteen-day period constitutes a waiver of any claim that that a delay is not subject to penalties.

- c. Whenever a deadline is missed, pursuant to a force majeure event or otherwise, the Respondent shall exercise their best efforts to recoup all lost time, including where appropriate, the payment of extraordinary expenses for overtime, double shifts, or additional contractors or consultants, or alternative methods to the extent allowable under local law.
- d. If the Department reasonably determines that no force majeure event occurred and a stipulated penalty is due, Respondent shall promptly pay the stipulated penalty pursuant to Paragraph IX in this Order on Consent plus interest from the date of the missed deadline.
- e. Regardless of any force majeure event asserted under this Paragraph, nothing set forth herein relieves Respondent of its obligation to provide and submit or issue any other notices and reports as required by law, its Permit, or this Order on Consent.
- f. Respondent shall have the burden of proving that its respective non-compliance with this Order, if any, is directly attributable to a force majeure event, and that its compliance with this Paragraph XII constitutes a defense to compliance with this Order on Consent.

XIII. ACCESS

For the purpose of ensuring compliance with this Order on Consent, Respondent shall allow duly authorized Department representatives access to its permitted facilities and any appurtenances involved herein, without prior notice, to enable Department representatives to inspect and determine the status of the Respondent's compliance with this Order on Consent.

XIV. EFFECT OF SETTLEMENT

- a. This Order on Consent is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits (including its Permit), and Respondent's compliance with this Order on Consent 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 entry of this Order on Consent, warrant or aver in any manner that Respondent's compliance with any aspect of this Order on Consent will result in compliance with provisions of the CWA, or with any other provisions of

federal, State, or local laws, regulations, or permits, including Respondent's SPDES permits.

- b. This Order on Consent does not limit or affect the rights of Respondent or of the United States or the State against any third parties, not party to this Order on Consent, nor does it limit the rights of third parties, not party to this Order on Consent, against Respondent, except as otherwise provided by law.
- c. This Order on Consent shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Order on Consent.

XV. DISPUTE RESOLUTION

In the event of a dispute between the Department and Respondent with respect to the performance under this Order on Consent, the parties shall make reasonable efforts over the course of no more than 45 days to meet and confer in an effort to resolve such dispute. Such efforts to meet and confer are to be initiated by Respondent in writing pursuant to Paragraph VIII (Communications). Review under New York Civil Practice Law and Rules Article 78 shall be available for all final agency actions under this Order on Consent. Should Respondent invoke Dispute Resolution under this Paragraph, stipulated penalties shall nonetheless continue to accrue and shall be payable either (i) not more than ten days after the informal resolution of the dispute in the Department's favor within the designated 45-day period or (ii) within ten days of the issuance of a civil order or judgment unless and to the extent that a civil order or judgment is issued in Respondent's favor.

XVI. MODIFICATION

If Respondent desires that any of the provisions, terms or conditions of this Order on Consent be changed, it shall make timely written application setting forth the grounds for the relief sought to the Department pursuant to Paragraph VIII. Grounds for modification may include, without limitation, EPA's failure to approve submitted UAA Reports. Any change to this Order on Consent must be in writing and signed by Respondent and the Commissioner or the Commissioner's designee.

XVII. TERMINATION AND RESERVATION OF RIGHTS

- a. This Order on Consent shall be deemed completely satisfied and shall terminate as follows: the Respondent has paid the civil penalty set forth in Paragraph II above and stipulated penalties, if any, due and owing under this Order on Consent have been paid; and one of the following occurs:
 - i. Respondent demonstrates that CSOs are not causing or contributing to a violation of the applicable water quality standards in the CSO receiving waters for one full year; or
 - ii. CSO discharges are not violating WQS by reason of WQS revisions, variance or reclassification of the receiving waters; or
 - iii. Five (5) years after the effective date of this Order, or any extension thereto

required to comply with Paragraph 25 herein and in accordance with Paragraphs VI, VII and/or XII, this Order on Consent is revised, amended, replaced or extended by a subsequent Order on Consent.

- b. Nothing herein shall be construed as a release or waiver by the Department of its rights to: (1) seek injunctive relief to abate any violation of law or this Order on Consent; (2) seek stipulated penalties and entry of judgment as provided in Paragraph IX of this Order; (3) seek penalties and other relief for any violations not set forth in this Order on Consent, including its Appendices; (4) re-allege the violations listed in this Order on Consent to obtain injunctive relief or damages in support of natural resource damage claims; (5) seek to modify, suspend, or revoke any Department-issued permit; (6) seek any applicable criminal sanctions against Respondent or any other party; or (7) seek issuance by the Commissioner or his duly authorized representative of a summary abatement order against Respondent. In addition, the Department reserves all such rights as it has to require Respondent to take any additional measures required to protect human health or the environment.

XVIII. SIGNATORIES TO ORDER

Each undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Order on Consent and to execute and legally bind the Party he or she represents to this document. This Order on Consent may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

XIX. INDEMNIFICATION

Respondent indemnifies and holds harmless New York State, the Department, and any of its employees, contractors or representatives for any and all claims, actions, suits, damages, and costs of every name and description, arising out of or resulting from the fulfillment or attempted fulfillment of the provisions of this Order on Consent by Respondent, its directors, officers, employees, servants, agents, successors or assigns, to the extent that any such claims, actions, suits, damages, and costs are not caused by intentional or negligent acts of New York State, the Department or any of their employees or contractors.

XX. ENTIRE ORDER

This Order on Consent and attachments, if any, constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Order on Consent, and supersede all prior agreements and understandings, whether oral or written. Unless expressly incorporated herein, no other document, representation, inducement, agreement, understanding, or promise constitutes any part of this Order on Consent or the settlement it represents, nor shall it be used in construing the terms of this Order on Consent.

XXI. EFFECTIVE DATE

Once signed by the DEC Commissioner or the Commissioner's designee, the effective date of this Order is the date of ENTRY WITH NOTICE of a federal decree dismissing, terminating, or discontinuing the federal action in federal district court for the northern district of New York (Case No. 88-CV-066).

DATED: MARCH 16, 2021

SYRACUSE, NEW YORK

New York State Department of Environmental Conservation

By: 

Name: MATTHEW J. MARKO

Title: DIRECTOR, REGION 7

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order without further notice, waives its right to a hearing herein as provided by law, and agrees to be bound by the terms, conditions and provisions contained herein. The undersigned represents and affirms that they have the legal authority to bind Respondent to the terms and conditions of this Order.

COUNTY OF ONONDAGA

By: *J. Ryan McMahon, II*

Name: J. Ryan McMahon, II *SM*

Title: County Executive

Date: March 3, 2021

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF ONONDAGA)

On the 3rd day of March, in the year 2021, before me, the undersigned, personally appeared J. Ryan McMahon, II, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her capacity as shown in the instrument, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

MARGARET M. DOHERTY
Notary Public, State of New York
Registration #01DO6278230
Qualified In Onondaga County
Commission Expires March 18, 2027

Margaret M. Doherty
NOTARY PUBLIC

Schedule A:
Interim CSO Corrective Measure Plan

Plan: Respondent shall, within 6 months of the effective date of this Order (“EDO”), submit an Interim CSO Corrective Measures Plan (“Plan”) that shall be implemented for the duration of the Order on Consent until the Order on Consent has been terminated. The Plan shall include the following:

- 1) Limited CSO Abatement Projects: List of CSO Abatement Projects the Respondent has currently committed to funding or constructing/implementing over the five (5) year period of the Order.
- 2) Focused Post-Construction Compliance Monitoring Program (PCCM): Where implemented, the focused PCCM shall be consistent with the *CSO Control Policy* and EPA Guidance to support Use Attainability Analyses (UAAs) for fecal coliform, track water quality improvements, and support the maintenance of the Respondent’s stormwater management model (“SWMM”). DEC shall review and approve the focused PCCM.
- 3) CSO Metering Program: The Respondent shall submit an annual CSO Metering Program to support the continued ongoing calibration and maintenance of the Respondent’s stormwater management model (“SWMM”). The CSO metering program is subject to DEC review and approval. The Respondent shall update its SWMM on an annual basis to represent projects or improvements completed in the previous calendar year. The Respondent shall propose a SWMM re-calibration plan, as needed, when projects or other system improvements have occurred that necessitate re-calibration of the SWMM.

Annual Plan Reporting: Commencing upon the EDO, on or before April 1 of every year for five (5) years Respondent shall submit to the Department a detailed written summary as follows:

- 1) Status of any Respondent owned/managed/funded CSO Abatement Projects that have been implemented or are in planning stages over the past year.
- 2) Status of any non-Respondent owned/managed/funded “Opportunistic” projects that have been implemented or are in planning stages over the past year, including the potential New York State I-81 improvement project.
- 3) Summary of the metering data and review of any discrepancies between the Respondent’s SWMM and the metered data obtained over the past year, and an update and recalibration, in accordance with the SWMM re-calibration plan, of Respondent’s SWMM.
- 4) Summary of any PCCM data (if implemented) and determination of WQ improvements resulting from implementation of CSO Abatement Projects.
- 5) Such reports shall be sent to the Department at the addresses set forth in Paragraph VIII of this Order.

Disinfection Report: Within two (2) years of the EDO, Respondent shall prepare and submit to the Department an approvable report consolidating and summarizing available data pertaining to CSO disinfection technologies implemented by Respondent and analyzing the disinfection program implemented at Respondent’s Midland Avenue Regional Treatment Facility (“RTF”).

The Report shall provide an analysis of the water quality benefits from disinfection (e.g., fecal coliform reduction and attainment of water quality standards) in the receiving waters for the existing Midland Avenue RTF utilizing existing collected ambient and effluent data, as well as engineering, capital, and operation and maintenance costs associated with the disinfection program implemented thereat. The report shall document how the existing disinfection data set from the Midland Avenue RTF will be utilized in performing and analyzing CSO disinfection under the separate UAA Reports and any additional disinfection considerations required under an approvable LTCP

Schedule B: Schedule of Deliverables

Pursuant to this Order on Consent, Respondent and the Department shall collectively, to the maximum extent practicable, diligently progress submissions, reviews, comments, revisions and approvals of the County's revised LTCP and any UAA Reports in accordance with the timeline and deadlines set forth below. It is understood that such timeline and deadlines are derived from best, reasonable, estimates, and that deadlines may be extended pursuant to Paragraphs VI, VII and XII of this Order.

1) Water Quality Data Review:

The Department and Respondent shall initiate the process of indexing existing data and arranging such in a usable format, reviewing existing data for QA/QC, and analyzing such data. Within one (1) year of the effective date of this Order ("EDO"), the Department will complete its review of existing and relevant information, data, analyses and modeling pertaining to the physical, chemical, biological and economic qualities of Onondaga Lake, its tributaries, environs and surroundings ("existing data"). The Department and Respondent shall cooperate and coordinate with respect to the review and arranging/formatting of existing data.

With respect to existing data and the potential need for additional data, the Parties acknowledge the value of existing data and the Department agrees to Respondent's use of such existing data for Use Attainability Analysis (UAA) Report development as per the *CSO Control Policy* and EPA guidance. Notwithstanding the existing data, the Parties also acknowledge that whenever it reasonably appears, after a review of all such existing data, that additional data is necessary to measure pollutants in CSOs that cause or contribute to water quality criteria excursions or to identify sources beyond CSO discharges that may be contributing to non-attainment, additional tributary data shall be collected at the upstream and downstream boundaries of the tributaries where CSOs occur. However, Respondent is not responsible for control or monitoring of other third party sources of impairment. Further, any determination by the Department as to the reasonable need for additional data collection, sampling and/or monitoring shall wait until the review of all such existing data to determine any data gaps and/or the needs of UAA Reports are complete.

Water sample collection sites shall be at the same locations as previously approved by the Department for the County's Ambient Monitoring Program (AMP), to wit: Onondaga Creek – Dorwin Ave. (upstream of CSOs) and Kirkpatrick Street (downstream of CSOs); Harbor Brook – Velasko Rd. (upstream of CSOs) and Hiawatha Blvd. (downstream of CSOs); and Ley Creek – Thompson Rd. (upstream of CSOs) and Park St. (downstream of CSOs).

2) Additional Water Quality Data:

If the Department deems it necessary after a review of existing data for Respondent to perform additional data collection/monitoring, Respondent will begin collecting such data two (2) years after the EDO and complete such activities within four (4) years of the EDO.

3) Revised LTCP and UAA Reports:

Within four (4) years and six (6) months of the EDO, Respondent shall submit a revised LTCP, together with UAA Reports, to the Department for review and approval. The Department shall review and the Respondent shall further revise, if necessary, the LTCP and UAA Reports and shall do so expeditiously, to the maximum extent feasible, so as to have an approved LTCP and UAA Reports within five (5) years of the EDO. Thereafter, and on or prior to the end of the fifth (5th) year from the EDO, UAA Reports will be sent forthwith to EPA for approval. Upon EPA approval of UAA Reports, the County shall petition the Department for revision of applicable WQS.

UAA Reports will be limited to the segments of Harbor Brook, Onondaga Creek and Ley Creek impacted by CSOs and areas impacted downstream of CSO discharges; recreational use WQS, namely total and fecal coliforms parameters as listed in 6 NYCRR 703.4; and, any other waterbody uses impacted by CSOs.

4) Disinfection Report:

Within two (2) years of the EDO, Respondent shall, in accordance with Schedule A to this Order, submit to the Department an approvable disinfection report.

5) Plan Deliverables:

Within six (6) months of the EDO, Respondent shall, in accordance with Schedule A to this Order, submit to the Department: (1) a list of limited CSO Abatement Projects to be funded or implemented by Respondent over the term of this Order; (2) an approvable focused PCCM; and (3) an approvable annual CSO Metering Program plan.

6) Annual Plan Reporting: Commencing upon the EDO, on or before April 1 of every year for five (5) years Respondent shall submit to the Department an annual report prepared in accordance with Schedule A to this Order.



**Department of
Environmental
Conservation**

**Consent Order
INVOICE**

Customer #: 145116
Invoice #: 7777000000266
Invoice Date: 04-Mar-2021

Legally Responsible Party:
ONONDAGA COUNTY
650 Erie Boulevard West
Syracuse, N.Y. 13204

Instructions for viewing your invoices on-line and paying electronically can be found at:
<https://www.dec.ny.gov/about/61016.html#On-Line>

DEC Order Number	Billing Year	Description	Qty	Unit Price	Payable Penalty Due
R7-20210304-6		Consent Order R7-20210304-6 Penalty Payment	1	1,000.00	1,000.00

SubTotal	1,000.00
Payments	0.00
Credits	0.00
Outstanding balance as of 04-Mar-2021 in USD	1,000.00
Payment Due Date	04-Mar-2021

Please pay civil penalty in full upon execution of the Consent Order.

=====TEAR HERE=====

**CHECKS SHOULD BE MADE PAYABLE TO: NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION.
PLEASE TEAR THE BOTTOM PORTION AND INCLUDE IT ALONG WITH YOUR PAYMENT.**

Customer #: 145116
Invoice #: 7777000000266
Invoice Date: 04-Mar-2021

Amount Enclosed: _____
Check Number: _____

Bill To:
ONONDAGA COUNTY
650 Erie Boulevard West
SYRACUSE, N.Y. 13204

Remit To:
NYS Department of Environmental
Conservation
Division of Management & Budget, 10th Floor
625 Broadway
ALBANY, NY 12233-4900