

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENT CONSERVATION**

-----X  
In the Matter of Alleged Violations of Article 17 of the  
Environmental Conservation Law (ECL) and Part 750 of  
Title 6 of the Codes, Rules and Regulations of the State of  
New York (6 NYCRR) occurring in the Town of Whitestown  
by:

**CONSENT  
ORDER**

**ONEIDA COUNTY,**

Case #  
R620060823-67

Respondent.  
-----X

**WHEREAS:**

1. Article 17 of the Environmental Conservation Law of the State of New York (ECL) provides the New York State Department of Environmental Conservation (Department) responsibility and authority to prevent and abate pollution of the waters of the state.
2. Respondent, Oneida County, is a municipal corporation organized and existing pursuant to the laws of the state of New York with main offices located at 800 Park Avenue, city of Utica, County of Oneida, New York 13501. Respondent owns and/or operates the Oneida County Water Pollution Control Plant (the WPCP) located at 51 Leland Avenue, Utica, New York. Respondent also owns and/or operates the Sauquoit Creek Pump Station ("Pump Station"), which discharges into the WPCP. The Pump Station is located in the village of Yorkville, town of Whitestown, County of Oneida, New York.
3. Pursuant to the authority granted to the Department by Article 17 of the ECL, the Department issued State Pollutant Discharge Elimination System (SPDES) Permit Number NY-0025780 (permit) to the Respondent. The permit governs the discharge of sewage to

the waters of the state. Current permit limits, levels, and monitoring requirements became effective June 1, 2008, and expire May 31, 2013.

4. The permit has been effective at all times relevant hereto. The permit authorizes the Respondent to discharge treated WPCP effluent from Outfall 001 into the Mohawk River, a Class C water body of the state, and a combined sewer overflow (CSO) discharge from Outfall 002 at the Pump Station into the Mohawk River. A CSO results when a wastewater collection system, by design, conveys combined sewage for discharge, via an overflow, to the waters of the state when the system becomes hydraulically overloaded.

5. Wastewater is discharged to the Pump Station from several Oneida County municipalities including the villages of Clayville, New York Mills, Yorkville, Whitesboro, New Hartford, Oriskany; portions of the town of New Hartford; and the towns of Paris and Whitestown. This Order relates only to wastewater discharges from these municipalities to Outfall 002 at the Pump Station.

6. During an inspection performed on February 6, 2006, the United States Environmental Protection Agency (USEPA) observed that the service area going into Outfall 002 appeared to be comprised of separate sanitary sewer systems.

7. On February 24, 2006, in a letter sent from Shayne Mitchell, P.E. of the Department to Steven Devan, P.E. of the Respondent (the February 24, 2006, letter), the Department informed Respondent, among other things, of its determination that the sewers connected to Outfall 002 are not discharging from combined sewer overflows and that Outfall 002 is a sanitary sewer overflow (SSO). A SSO results when a wastewater collection system that by

design includes sewage, but incidentally includes stormwater-related inflow and infiltration discharges to the waters of the state.

8. Among other things, the February 24, 2006, letter indicated that the submission of a flow management plan would be required, and it further indicated that 6 NYCRR 750-2.9(c)(1) specifies that the flow management plan for managing flows at the POTW was due within one hundred twenty (120) days.

9. On June 28, 2006, the Department noticed a modification to the SPDES permit so that it classified Outfall 002 as an SSO with conditions prohibiting discharge from Outfall 002 except during an emergency or when there is no feasible alternative to bypass.

10. The Pump Station overflows discharge directly upstream of section 12 of the Mohawk River (Water Index No. H-240, portion 12), which is listed as an impaired water on New York State's Clean Water Act Section 303(d) impaired waters list for floatables, pathogens, and dissolved oxygen/oxygen demand standards.

11. The Department has determined that the discharge of partially treated sewage from the Pump Station during wet weather contributes to the impairment of section 12 of the Mohawk River.

12. ECL §17-0803 provides:

Except as provided by subdivision five of section 17-0701 of this article [not applicable], it shall be unlawful to discharge pollutants to the waters of the state from any outlet or point source without a SPDES permit issued pursuant hereto or in a manner other than prescribed by such permit . . . ; and

6 NYCRR Part 750-1.2 provides:

1. (a) Whenever used in this Part, unless a different meaning is stated in a definition

applicable to only a portion of this Part, the following terms will have the meanings set forth below:

(87) Stormwater means that portion of precipitation that, once having fallen to the ground, is in excess of the evaporative or infiltrative capacity of soils, or the retentive capacity of surface features, which flow or will flow off the land by surface runoff to the waters of the state.

(95) Wastewater means water that is not stormwater, is contaminated with pollutants and is or will be discarded.

13. The permit authorizes Respondent to operate Outfall 002 as a CSO. Because there were direct sanitary sewage discharges to the Pump Station via a separate sanitary sewage line, Respondent historically operated Outfall 002 as an SSO.

14. ECL §17-0509 requires Respondent to provide effective secondary treatment as a minimum degree of treatment prior to the discharge of sanitary sewage into the surface waters of the state.

15. Therefore, Respondent violated the provisions of ECL §17-0803, ECL §17-0509, the permit, and 6 NYCRR Part 750-2.1(I). Pursuant to ECL §71-1929, Respondent is liable for a penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per violation per day and injunctive relief.

16. On or about February 26, 2007, the Department commenced an administrative enforcement action by serving on Respondent a Notice of Hearing and Complaint. The Complaint contained four causes of action alleging that Respondent had violated the permit and ECL §17-0803 by operating Outfall 002 as an SSO, had violated 6 NYCRR Part 750-2.9 by failing to properly enact a local sewer law, had violated ECL §17-0509 by failing to secondarily treat sanitary sewage prior to discharge, and had violated ECL §17-0803, the

permit, and 6 NYCRR Part 750-2.1 by failing to timely submit a flow management plan.

Respondent submitted an Answer and an Amended Answer thereto.

17. On July 11, 2007, the Department and Respondent executed an administrative Order on Consent (#R620060823-67) ("2007 Order") to address the violations set forth in the Complaint. Among other things, the 2007 Order required Respondent to:

- Upgrade the Pump Station to eliminate the SSO by October 31, 2014;
- Take interim measures to reduce flow to the Pump Station;
- Enter into Inter-Municipal Agreements (IMAs) and/or other enforceable legal instruments to ensure the County's authority to implement an offset program with the upstream tributary communities;
- Pay a \$120,000 penalty, and fund a \$30,000 EBP;
- Create an offset program, so that any new connections to the system served by the Pump Station would have to be offset by the removal of 5 gallons for each 1 gallon added; and
- Be subject to stipulated penalties for any schedule violations.

18. Since the effective date of the 2007 Order, the County has been in compliance with its terms. The County has: implemented some interim measures to try and reduce flow to the Pump Station; required any new connections to the Pump Station to offset discharges at a 5:1 offset gallonage ratio; paid the \$120,000 penalty; performed the EBP; revised its Sewer Use Rules and Regulations; and entered into 9 IMAs for purposes of access.

19. On August 12, 2010, Respondent timely requested that the end date of the Order be extended six (6) years to December 31, 2020, based on an engineering study claiming the upgrade could not be completed earlier. In July 2011, Respondent requested that the end date of the Order be extended to December 31, 2021.

20. In settlement of Respondent's civil liability for the aforesaid violations, Respondent admits the violations set forth herein, and has waived its right to a hearing herein as provided by law and has consented to the issuing and entering of this Order on Consent pursuant to the

provisions of Articles 17 and 71 of the ECL, and has agreed to be bound by the provisions, terms, and conditions herein. Notwithstanding the foregoing, the existence of this Order or Respondent's compliance with it, shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party.

**NOW, THEREFORE**, having considered this matter and being duly advised, it is ordered that:

**I. EFFECT ON PREVIOUS ORDERS**

A. Respondents are bound by, and agree to follow and comply with the terms, provisions, and requirements set forth in this Order, including Schedule A, which is incorporated herein. Except as set forth in subparagraph I.B below, this Order supersedes and replaces, in its entirety, the 2007 Order. Except as set forth in subparagraph I.B below, upon the effective date of this Order, the 2007 Order is considered null and void. The requirements set forth in this Order are additional to, and do not affect any requirements set forth in any Orders on Consent between DEC and Respondent other than the 2007 Order.

B. 1. The following documents, reports, and their respective applicable correspondence which were developed pursuant to the 2007 Order, are hereby incorporated into and made an enforceable part of this Order:

a. Flow Management Plan and Wet Weather Operating Plan - Received 12/10/2007;

b. OCSD Sewer Overflow Response Plan - Received 10/30/2007, implemented 4/1/08 – The measures set forth in this Plan will continue to be implemented until the discharges from the Sauquoit Creek Pump Station are brought into compliance;

c. OCSD Inflow/Infiltration (I/I) Offset Plan dated January 4, 2008, as revised September 23, 2008;

d. Supplemental Report - Re-evaluation of Temporary Treatment Alternatives for the Sauquoit Creek Pumping Station Bypass - Received 12/24/2010;

e. OCSD Sauquoit Creek Pumping Station Sanitary Sewer Overflow Mitigation Plan – Received 7/7/2010;

f. OCSD 12/23/10 response to the Department's 10/27/10 comments on the Sauquoit Creek Pumping Station Sanitary Sewer Overflow Mitigation Plan.

2 . The practices, schedules, and other requirements set forth in these reports and submittals, as may be amended from time to time with the approval of the Department shall remain in full force and effect, unless they are inconsistent with the requirements of Schedule A attached hereto, and in such cases, Schedule A shall control.

3. Should any future reports or facility repair and upgrades necessitate changes to the documents listed in Section I.B.1 above, any modifications to said documents may be initiated by the Department or Respondent. Any modification approved by both parties will become an enforceable component of this Order.

## **II. COMPLIANCE WITH ORDER**

A. 1. Respondent shall comply, in a timely manner, with the terms of the attached Schedule A. Schedule A is hereby incorporated into and made an enforceable part of this Order. Respondent's failure to comply fully and in a timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and the ECL, subject to the dispute resolution provisions set forth at Paragraph VI below. Schedule A, Item C.3, sets forth a final completion date for the work described therein. Respondent may request in writing the Department's consent to an

extension of any interim completion date set forth in Schedule A provided Respondent has diligently performed the work described in Schedule A, and further provided that Respondent provides to the Department in writing a technical/engineering justification in support of the extension request, prepared and certified by a professional engineer currently licensed to practice in the state of New York. The Department shall not unreasonably withhold, deny or delay its consent for an extension of any interim completion date set forth in Schedule A.

2. A list of definitions for use in this Order is set forth in Schedule B, which is incorporated into and made an enforceable part of this Order.

B. Respondent shall continue to implement the terms of the Department approved “Oneida County Sewer District, Inflow/Infiltration Offset Plan” dated April 2, 2008, including revisions thereto.

C. Once the Department completes its review of the below referenced programs and its comments are received by the Respondent, as required by Schedule A of this Order, the following documents will be incorporated into and made enforceable under this Order to the extent these programs affect wastewater discharges to Outfall 002 at the Pump Station from the Satellite Municipalities, until such time as they are made part of Respondent’s SPDES Permit:

1. CMOM Program;
2. Asset Management Program; and
3. Private Property I/I Reduction Program.

### **III. COMPLIANCE SCHEDULE**

A. The goal of this Order shall be to eliminate all SSO discharges from the Pump



Station. Respondent submitted a mitigation plan entitled, "Sauquoit Creek Pumping Station, Sanitary Sewer Overflow Mitigation Plan, Oneida County Sewer District," dated July 7, 2010 ("Mitigation Plan"), describing projects and programs to bring Outfall 002 into compliance with Respondent's SPDES Permit by December 31, 2021. The Mitigation Plan proposed to eliminate the SSO at Outfall 002 by a combination of sanitary sewer system rehabilitation upgrades to the Pump Station and WPCP. In performing the projects and programs set forth in the Mitigation Plan, Respondent shall comply with the compliance schedule in attached Schedule A, which is incorporated into and made an enforceable part hereof.

B. In the event Respondent must obtain a permit from the Department to perform work required under this Order, and the Department (i) fails to act on the review and processing of a permit application submitted by Respondent, or (ii) fails to issue a permit within the time frames set forth in the regulations implementing Article 70 of the ECL, Uniform Procedures Act, which regulations are set forth at 6 NYCRR Part 621, Respondent's time for completing work dependent on permit issuance shall be extended by the number of days the Department fails to act within the regulatory time frames. To avail itself of the relief set forth in this paragraph, Respondent must make all best efforts and exercise all due diligence in submitting timely, accurate, and complete applications for any applicable permit. The parties acknowledge that the construction season for exterior work to be performed under this Order runs from April 1 to November 30. If any extension of time pursuant to this paragraph pushes Respondent's exterior work outside of the construction season for any calendar year, Respondent's extension shall carry forth to the next

construction season. Respondent shall begin the work at the start of the next construction season.

#### **IV. SETTLEMENT AND RESERVATION OF RIGHTS**

A. Upon completion of all obligations created in this Order, all the Department's claims for civil or administrative penalties arising from the allegations set forth in this Order, as well as all bypasses from Outfall 002 of which the Department has knowledge up to the date of this Order, shall be deemed resolved, satisfied, and discharged against Respondent.

B. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting:

1. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action(s) or demands whatsoever that the Department may have with respect to investigatory, remedial, or corrective action or with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances, petroleum, or other pollutants at or from Respondent's Pump Station and WPCP, or areas in the vicinity of Respondent's Pump Station and WPCP;

2. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent;

3. The Department's right, to the extent provided by law, to require that Respondent undertake additional measures required to protect public health or the environment, including interim remedial measures, at the Pump Station during all overflow periods;

4. The Department's right, to the extent provided by law, to enforce any provision of

the ECL, except as to those alleged violations, actions, or omissions which are addressed in this Order; and

5. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands that Respondent may have against third parties for remedial or corrective action.

C. Respondent shall comply with, and be bound by, the schedules, timetables, and requirements set forth in Schedule A, and any approved reports submitted thereunder, irrespective of the availability of financial assistance from federal, state, or other sources.

D. In the event that a discharge occurs from Outfall 002 after the effective date of this Order, the Department reserves all legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department may have against Respondent regarding said discharge.

## **V. STIPULATED PENALTIES**

In the event Respondent fails to meet Schedule A deadlines, Respondent shall, within fifteen (15) days following a written notice of a demand for payment from the Department, pay to the Department a stipulated penalty as follows:

### **Failure to meet Schedule A deadlines**

<u>Days Overdue</u>	<u>Penalty Amount/Days overdue</u>
1 - 30	\$ 1000/day
31 - 40	\$ 1500/day
41 - 50	\$ 2000/day
51 - 60	\$ 2500/day
more than 60	\$ 5000/day

The total stipulated penalty is calculated by multiplying the days in violation or overdue by

the corresponding penalty amount. The Department shall not be precluded from taking any action authorized by law, and the Department may seek the sanctions provided in the ECL in addition to assessing stipulated penalties as set forth in this Order. Should the Department seek penalties and/or sanctions beyond those stipulated in this Order, the Respondent shall be provided all rights mandated by applicable law and regulation.

## **VI. DISPUTE RESOLUTION**

A. The parties recognize that in the course of the design, construction, and modification of this Order, and projects/tasks required by this Order, disputes may arise between the parties regarding the appropriateness of any disapproval by the Department of a required submittal by the Respondent, conditions attached to the Department's approval of a required submittal, whether DEC has appropriately rejected a modification requested by Respondent pursuant to Paragraph XII, whether a force majeure event has in fact occurred, any other determination by the Department under this Order, or the Respondent's compliance with the terms of this Order. In the event such a dispute arises, it shall be resolved as follows.

B. If the Department disapproves a submittal required by Respondent under this Order, approves a required submittal with conditions that Respondent deems unacceptable, makes any other determination that Respondent has violated this Order, or declines to agree to an Order modification requested by Respondent pursuant to Paragraph XII, then the Department's Region 6 Regional Engineer shall issue a written determination ("DEC Determination") to Respondent setting forth the basis for disapproval of the submittal, conditional approval of the submittal, other basis for determining that Respondent has

violated this Order, or basis for not agreeing to a requested Order modification. If Respondent disputes the DEC Determination, Respondent may seek to resolve the dispute by requesting informal negotiations with the Department. Upon such a written request by the Respondent, the Department and Respondent shall make reasonable efforts to resolve the dispute through informal negotiations. The Department shall make all good faith efforts to meet with and/or discuss the dispute in question with Respondent, as soon as practicable, and the parties shall make reasonable efforts to resolve the dispute through informal negotiations. Unless both parties agree in writing otherwise, the time to conclude informal negotiations shall terminate thirty (30) days from the day Respondent receives the DEC Determination. If the dispute is resolved through informal negotiations, then the agreed upon resolution shall be incorporated into this Order. If the dispute is not resolved through informal negotiations, the disputed DEC Determination shall be binding upon Respondent, unless Respondent invokes the remedies set forth in paragraphs VI.C or VI.D below.

C. Respondent may, within seven (7) days after the termination of the informal negotiation period set forth above, submit a written request to the Department to the individual set forth in Paragraph XVIII below, seeking review of the dispute by the Assistant or Deputy Commissioner for Water Resources (Decision-Maker). The parties shall have twenty (20) days after Respondent's request is delivered to the Decision-Maker to present their arguments to the Decision-Maker, who shall have ten (10) more days to issue a decision. Any decision issued by the Decision-Maker shall be final and binding upon the parties, unless Respondent invokes the remedy set forth in paragraph VI.D below.

D. Respondent shall also have the right to challenge a DEC Determination or a

decision by the Decision-Maker in an Article 78 proceeding in New York State Supreme Court for Oneida County. To do so, Respondent must commence the Article 78 proceeding within thirty (30) days of the termination of the informal dispute resolution period or twenty (20) days after receiving a written decision from the Decision-Maker. If such a proceeding is commenced, any DEC Determination or written decision by the Decision-Maker hereunder shall be deemed to be final agency action. If Respondent does not commence an Article 78 proceeding within thirty (30) days of receiving the DEC Determination, then Respondent shall waive the right to challenge the DEC Determination and the assessment of any penalties, if applicable and appropriate, associated with the DEC Determination. The parties may agree, in writing, and on a case-by-case basis, to extend the time period within which Respondent must commence an Article 78 proceeding to challenge a particular DEC Determination. Respondent shall have no right to any formal administrative review of a DEC Determination.

E. In any Article 78 proceedings, challenging a DEC Determination, service of the petition and accompanying papers commencing the proceeding, and all subsequent papers, shall be made by Respondent on the state in accordance with Paragraph XVIII below or to such other individuals as the Department shall designate pursuant thereto. Service on those individuals shall be deemed valid service on the Department.

F. If, in the case of a challenge by Respondent to a DEC Determination disapproving a submittal required under this Order or approving a required submittal with conditions that Respondent considers unacceptable, the submittal is found to have been approvable as submitted, then no penalties or interest may be assessed and subsequent

milestone dates shall be extended appropriately, as agreed upon by Respondent and the Department or as otherwise determined by the court. If the submittal is found to have been properly disapproved, then penalties and interest, if applicable and appropriate, shall be assessed from the date of the DEC Determination, subject to the minimum notice requirements of this Order, and the subsequent milestone dates shall not be extended, unless otherwise agreed upon by the state and Respondent, or ordered by the court, for good cause shown by Respondent.

G. If, in the case of a challenge by Respondent to a DEC Determination rejecting an Order modification requested by Respondent pursuant to Paragraph XII, the DEC Determination is found to be arbitrary and capricious, then no penalties or interest may be assessed and subsequent milestone dates shall be extended appropriately, as agreed upon by Respondent and state, or as otherwise determined by the court. If the DEC Determination rejecting the modification is found to have been properly disapproved, then penalties and interest, if applicable and appropriate, shall be assessed from the date of the DEC Determination, subject to the minimum notice requirements of this Order, and the subsequent milestone dates shall not be extended, except unless otherwise agreed upon by the state and Respondent, or ordered by the court, for good cause shown by Respondent.

H. If, in the case of a challenge by Respondent to a DEC Determination predicated on a claim of force majeure by Respondent, the DEC Determination is found to be arbitrary and capricious, then no penalties or interest may be assessed, and subsequent milestone dates shall be extended appropriately, as agreed upon by Respondent and DEC, or as otherwise determined by the court. If Respondent's claim of force majeure is rejected, then penalties

and interest, if applicable and appropriate, shall be assessed from the date of the DEC Determination, subject to the minimum notice requirements of this Order, and subsequent milestones shall not be extended.

I. In the case of any other challenge by Respondent to a determination by the Department issued hereunder (including, but not limited to, a challenge to a DEC Determination that Respondent has failed to timely submit a Quarterly Progress Report as defined below, failed to submit any other report required hereunder on time, etc.), if the DEC Determination is upheld then penalties and interest, if applicable and appropriate, shall be deemed due and payable when originally assessed by the Department, subject to the minimum notice requirements of this Order. Regardless of whether or not the DEC Determination is upheld, the bringing of such a challenge by Respondent, pursuant to this Paragraph VI.I, shall in no way result in an extension of any milestone dates under this Order.

J. The state shall have the right to enforce any decision by the Decision-Maker or an Order of the New York State Supreme Court for Oneida County, and any other obligation of Respondent hereunder, in New York State Supreme Court for Oneida County. Respondent consents that the state may commence an action in that court to enforce any obligation, and that service of the papers commencing the action shall be deemed valid and complete service on Respondent.

## **VII. FORCE MAJEURE**

Respondent shall not be liable for any penalty under this Order or be subject to any proceedings or actions for any remedy or relief, if it cannot comply with any requirements of



this Order, because of an act of God, war, strike, a court ruling, riot, or other such condition as to which willful misconduct, negligence or other action or failure to act on the part of Respondent was not a proximate cause; provided however, that Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and shall request an appropriate extension or modification of the provisions hereof.

#### **VIII. ACCESS**

To ensure compliance with this Order, the ECL, and rules and regulations thereunder, authorized representatives of the Department shall be permitted access to those premises over which Respondent has control at all reasonable times in order to make inspections to see that Respondent is in compliance.

#### **IX. FAILURE, DEFAULT AND VIOLATION OF ORDER**

Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.

#### **X. INDEMNIFICATION**

Respondent shall indemnify and hold harmless the Department, the state of New York, and their representatives and employees for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and its successors (including successors in title) and assigns.

#### **XI. BINDING EFFECT**

This Order is binding upon Respondent, its agents, employees, successors, assigns,

and all persons, firms, and corporations acting subordinate thereto. Respondent's employees, servants, and agents shall be instructed to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

## **XII. MODIFICATION**

No change or modification to this Order shall become effective except as specifically set forth in writing and approved by the Commissioner or a duly authorized representative.

## **XIII. REPORTING REQUIREMENTS**

Starting March 31, 2012, and lasting until termination of this Order, Respondent shall submit to the Department for review and comment a quarterly progress report ("Quarterly Progress Report") summarizing the status and progress for all engineering investigations and evaluations, management programs, approved schedules, completed milestones, completed sanitary sewer rehabilitation, an assessment of the effectiveness of the completed rehabilitation, and completed capital improvement projects and facilities upgrades required by this Order. The Quarterly Progress Report shall also include any changes in key personnel, a summary of any new flows added to the Oneida County Sewer District within the Satellite Municipalities, and corresponding I/I removed from the Satellite Municipalities within the Oneida County Sewer District to conform to the 5:1 offset, as well as the locations of the removals/additions. The Quarterly Progress Report shall be due thirty (30) days after the corresponding calendar quarter.

## **XIV. ENTIRE ORDER**

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified in Paragraphs 2 through 19 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, pursuant to Paragraph XII of this Order. 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 Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

#### **XV. AUTHORITY TO SIGN**

The persons signing this Consent Order represent that they have full authority to bind the respective parties which they represent.

#### **XVI. EFFECTIVE DATE**

The effective date of this Order is the date on which the Commissioner or his representative signs this Order.

#### **XVII. TERMINATION**

This Order shall be deemed completely satisfied and shall terminate upon: (1) Respondent's payment of any due civil penalties; (2) Respondent's written certification, and DEC's written verification, of timely completion of the compliance requirements set forth in paragraph I.B.1, paragraph III.A, and Schedule A of this Order; and (3) the inclusion of the documents set forth in paragraph II.C into Respondent's SPDES permits.

#### **XVIII. SUBMISSIONS**

All penalties required under this Order will be sent to:

Department of Environmental Conservation  
317 Washington Street

Watertown, New York, 13601-3787  
Attention: Regional Attorney

All submissions required under this Order, other than penalties, will be sent to:

Regional Engineer  
Department of Environmental Conservation  
317 Washington Street  
Watertown, New York, 13601-3787

- and -

Director, Bureau of Water Permits  
Department of Environmental Conservation  
Division of Water  
625 Broadway, 4<sup>th</sup> Floor  
Albany, NY 12233

-and-

Project Manager  
North/Western Projects Section  
New York State Environmental  
Facilities Corporation  
634 Broadway  
Albany, NY 12207-2997

All submissions of a legal nature under this Order shall be sent to:

Chief, Water Bureau  
Department of Environmental Conservation  
Office of General Counsel  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233


#### **XIX. PLAN APPROVAL**

"Approvable" within the context of this Order shall mean approved by the Department with only minimal revision. Minimal revision will mean revised and resubmitted to the Department within thirty (30) days of notification by the Department of revisions that are

necessary.

Dated: Albany, New York  
December 12, 2011

**JOSEPH J. MARTENS, COMMISSIONER  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

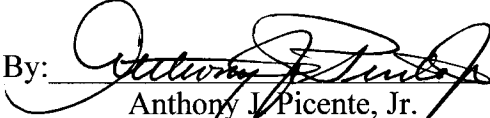
By:   
**JUDY DRABICKI, Director, DEC Region 6**

EDMS#395667

**CONSENT BY RESPONDENT**

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

**ONEIDA COUNTY**

By:   
Anthony J. Picente, Jr.  
Oneida County Executive


Title: County Executive

Date: 12-7-11

**MUNICIPAL ACKNOWLEDGEMENT**

STATE OF NEW YORK     )  
  ) SS.  
COUNTY OF ONEIDA     )

On this 7th day of December, 2011, before me personally appeared Anthony J. Picente, to me known, who being by me duly sworn, did depose and say that he resides in New York, that he is the County Executive of the County of Oneida, the municipal corporation described and which executed the foregoing instrument; that he knows the seal of said municipal corporation; that the seal affixed to said instrument is such seal; that it was so affixed by Order and authority of the Board of Legislators of said municipal corporation, and that he signed his name thereby by like Order and authority.

  
\_\_\_\_\_  
State of New York Notary Public  
Commission expires

JUDI A. SMITH  
Notary Public in the State of New York  
Qualified in Oneida County 04SM4950669  
My Commission Expires May 8-15

## **NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

### **SCHEDULE A- COMPLIANCE SCHEDULE**

Within 14 days of the effective date of this Order, Respondent shall provide all Oneida County Sewer District tributary municipalities with a copy of this Order and submit proof of service to the Department.

**To settle violations of the New York State Environmental Conservation Law**, the above referenced Respondent shall, on or before the dates indicated, comply with the following:

#### **A. Engineering Investigations and Evaluations**

1. By June 30, 2012, Respondent shall submit to the Department for review and approval an engineering report ("Dye Testing and Storm Sewer Evaluation Report") to verify suspected indirect or direct stormwater connections entering the sanitary sewer system. The extent of the dye testing and storm sewer inspections shall be at the discretion of the Respondent based on previous evaluations and general knowledge of the sanitary sewer system. The evaluations and Dye Testing and Storm Sewer Evaluation Report shall be performed in accordance with sound engineering practices.

2. By June 30, 2012, Respondent shall complete inspections of identified and accessible sanitary manholes and submit to the Department for review and approval an engineering report ("Manhole Evaluation Report - Phase II") identifying sources and estimated quantities of I/I entering the sanitary sewer system through defective sanitary manholes. Manhole Evaluation Report - Phase II shall include the remaining manholes that were identified, accessible, and that were not inspected during initial evaluations summarized in "Sauquoit Creek Pumping Station Basin, Sanitary Sewer Manhole Inspection, Data Summary, Oneida County Sewer District," dated July 2010. The manhole evaluations and Manhole Evaluation Report - Phase II shall be performed in accordance with sound engineering practices.

3. By April 30, 2013, Respondent shall perform closed circuit television (CCTV) evaluations and submit to the Department for review and approval an engineering report ("Sewer Television Inspection Report - Phase II") identifying sources and estimated quantities of I/I entering the sanitary sewer system. The CCTV evaluations and Sewer Television Inspection Report - Phase II shall include approximately fifty (50) percent of the remaining sanitary sewer segments that were not televised during the initial evaluations summarized in "Sauquoit Creek Pumping Station Basin, Sanitary Sewer Television Inspection, Data Summary, Oneida County Sewer District," dated July 2010. CCTV inspections and Sewer Television Inspection Report - Phase II shall be performed in accordance with sound engineering practices.

4. By August 31, 2012, Respondent shall develop and submit to the Department for review and approval an engineering report (“Sauquoit Creek Pump Station” or “SCPS Evaluation Report”) for expanding the pumping capacity of the Pump Station. The SCPS Evaluation Report shall include at a minimum: a) brief history of the Pump Station including past upgrades; b) current effective capacity of the Pump Station and force main; c) assessment of equipment condition; d) assessment of operational redundancy; e) make recommendations for upgrades; f) description of proposed upgrades within preliminary basis of design; g) details necessary to develop engineering plans and specifications; h) preliminary cost estimates for proposed upgrades; and i) implementation schedule of deadlines for key milestones, including submission of required engineering plans and specifications, and construction start and completion dates for all proposed upgrades. The SCPS evaluations and SCPS Evaluation Report shall be performed in accordance with sound engineering practice, Department standards, and generally accepted industry guidance.

5. By August 31, 2012, Respondent shall develop and submit to the Department for review and approval an engineering report (“Water Pollution Control Plant” or “WPCP Evaluation Report”) for expanding the treatment capacity of the WPCP. The WPCP Evaluation Report shall consider future growth and compliance with applicable state and federal regulations. The WPCP evaluations and WPCP Evaluation Report shall be performed in accordance with sound engineering practice, Department standards, and generally accepted industry guidance. Respondent shall have the option to submit to the Department a single report or two separate reports that address the requirements of subsections A.4 and A.5 of this Compliance Schedule.

6. Respondent shall submit a “Treatment System Supplement” to the SSO Mitigation Plan for Department review and approval within 60 days after approval by the Department of the SCPS Evaluation Report and the WPCP Evaluation Report that incorporates the data and remedial strategy developed subsequent to the SCPS and WPCP evaluations. Once approved, the “Treatment System Supplement” is thereby incorporated into and made an enforceable part of this Order.

7. By May 31, 2014, Respondent shall submit a “Collection System Supplement” to the SSO Mitigation Plan for Department review and approval that incorporates the data and remedial strategy developed subsequent to the cumulative completion of the Dye Testing and Storm Sewer Evaluation Report, Manhole Evaluation Report - Phase II, Sewer Television Inspection Report - Phase II, and Sewer Television Inspection Report - Phase III. Once approved, the “Collection System Supplement” is thereby incorporated into and made an enforceable part of this Order.

8. By April 30, 2014, Respondent shall perform closed circuit television (CCTV) evaluations and submit to the Department for review and approval an engineering report (“Sewer Television Inspection Report - Phase III”) identifying sources and quantities of I/I



entering the sanitary sewer system. The CCTV evaluations and Sewer Television Inspection Report - Phase III shall include the remaining sanitary sewer segments that were not televised during the initial evaluations summarized in "Sauquoit Creek Pumping Station Basin, Sanitary Sewer Television Inspection, Data Summary, Oneida County Sewer District" dated July 2010, and CCTV inspections performed pursuant to Subsection A.3 of this Compliance Schedule. CCTV evaluations and Sewer Television Inspection Report - Phase III shall conform to the requirements pursuant to Subsection A.3 of this Compliance Schedule.

## **B. Management Programs**

1. By March 31, 2012, Respondent shall develop and submit to the Department for review and comment a proposed flow monitoring program ("Flow Monitoring Program") with an implementation and annual reporting schedule to assess the effectiveness of completed sanitary sewer rehabilitation projects and to predict the anticipated I/I reduction for future rehabilitation projects. Flow monitoring shall be conducted in strategic locations and at appropriate intervals to make such assessments. Flow monitoring results and assessments shall be documented annually in the first Quarterly Progress Report to be submitted in 2013 pursuant to Paragraph XIII of this Order.

2. By June 30, 2012, Respondent shall develop and submit to the Department for review and comment a proposed program outline with an implementation schedule that includes coordination with the Satellite Municipalities ("Private Property I/I (PPI/I) Reduction Program") to reduce I/I sources from private property within the Satellite Municipalities. Implementation of the Private Property I/I (PPI/I) Reduction Program must commence by May 31, 2013.

3. By June 30, 2012, Respondent shall develop and submit to the Department for review and comment a proposed capacity, management, operations and maintenance program outline with an implementation schedule that includes coordination with the Satellite Municipalities ("CMOM Program") to control sanitary flows from Satellite Municipalities through efficient performance and proper operation and maintenance of the sanitary sewer system. The Respondent shall be responsible for CMOM Program oversight of Satellite Municipalities, including implementation and enforcement. The CMOM Program shall be developed in accordance with EPA's "Guide for Evaluating Capacity, Management, Operation, and Maintenance ("CMOM") Programs at Sanitary Sewer Collection Systems," EPA 305-B-05-002 (January 2005) and generally accepted industry guidance. Implementation of the approved CMOM program must commence by May 31, 2013.

4. By December 31, 2021, Respondent shall develop and submit to the Department for review and comment a proposed asset management program ("Asset Management Plan") for the long-term sustainability of County owned equipment related to the WPCP, pumping

stations, and sanitary sewer system. The Asset Management Plan shall be limited to equipment valued at more than \$50,000.

**C. Remedial Measures**

1. Upon the effective date of this Order, Respondent shall be obligated to ensure that sources of I/I entering the sanitary sewer system recommended for rehabilitation through engineering evaluations performed pursuant to Subsections A.1, A.2, A.3, A.7, and A.8 of this Compliance Schedule shall be remediated in accordance with the recommendations until compliance with this Order is achieved. Sanitary sewer rehabilitation shall be phased annually based on the compliance due date of December 31, 2021, and annual rehabilitation shall be scheduled pursuant to Subsection D of this Compliance Schedule. Each calendar year, Respondent shall mitigate identified sources of inflow/infiltration in locations that are part of or that collectively comprise a minimum of ten (10) miles of sanitary sewers. Mitigation may include a combination of pipe rehabilitation, pipe replacement, manhole rehabilitation, stormwater cross connection repairs, private property inflow/infiltration source removal, stormwater facilities to accommodate inflow/infiltration source removal, and removal of other inflow/infiltration sources. This mitigation work will continue until the "Collection System Supplement" described in subsection A.7 of this Compliance Schedule has been approved by the Department. If Respondent mitigates more than the annual minimum during any calendar year, Respondent may "bank" the excess and apply bank credits to an upcoming calendar year to demonstrate compliance with this Subsection. Upon completion, sanitary sewer rehabilitation work performed pursuant to this Subsection shall be eligible for credit to offset new sanitary sewer connection(s) and/or extension(s) in accordance with "Oneida County Sewer District, Inflow/Infiltration Offset Plan," dated April 2, 2008, as revised September 23, 2008. Offset credits obtained pursuant hereto may only be applied within the Satellite Municipalities tributary to SSO Outfall 002 that are subject to the *Oneida County Sewer District Inflow/Infiltration Offset Plan*, dated April 2, 2008, as revised September 23, 2008.

2. By December 31, 2016, Respondent shall complete the construction of the "Semi-Permanent Alternative" as described and recommended in "Supplemental Report, Re-Evaluation of Temporary Treatment Alternatives for the Sauquoit Creek Pumping Station Bypass," dated December 2010. Construction of a new force main shall be eligible for bank credits as described in Subsection C.1 of this Compliance Schedule. Respondent shall be responsible to obtain all required regulatory reviews, permits, and approvals, including an approved engineering report and engineering plans and specifications. In the event that Respondent determines the Semi-Permanent Alternative is not technically feasible based on engineering evaluations performed pursuant to Subsections A.4, A.5, and A.6 of this Compliance Schedule, or it is determined that the Semi-Permanent Alternative will not be required to eliminate the SSO at Outfall 002, Respondent shall submit such a determination with supporting engineering documentation to the Department for review and approval.

3. Upon Department approval of the SCPS Evaluation Report performed pursuant to Subsection A.4 of this Compliance Schedule, Respondent shall be obligated to construct the proposed upgrades in substantial conformance with recommendations made. Respondent shall be responsible to obtain all required regulatory reviews, permits, and approvals, including approved engineering plans and specifications. Construction of the upgrades shall be based on a compliance due date of December 31, 2021. In the event that Respondent determines that SCPS upgrades are not technically feasible based on engineering evaluations performed pursuant to Subsection A.4 and A.5 of this Compliance Schedule or SCPS upgrades are not required to successfully eliminate the SSO at Outfall 002, Respondent shall submit such a determination with supporting engineering documentation to the Department for review and approval.

4. Upon Department approval of the WPCP Evaluation Report performed pursuant to Subsection A.5 of this Compliance Schedule, Respondent shall construct the proposed upgrades in substantial conformance with recommendations made. Respondent shall be responsible to obtain all required regulatory reviews, permits, and approvals, including approved engineering plans and specifications. Construction shall be based on a compliance due date of December 31, 2021. In the event that Respondent determines that WPCP upgrades are not technically feasible based on engineering evaluations performed pursuant to Subsection A.5 of this Compliance Schedule or is not required to successfully eliminate the SSO at Outfall 002, Respondent shall submit such a determination with supporting engineering documentation to the Department for review and approval.

#### **D. Annual Work Plan**

Starting on the last day of the month that shall be the month that is 90 days after the effective date of this Order, Respondent shall submit to the Department for review and approval the first annual plan ("Annual Work Plan") of sanitary sewer rehabilitation and facility upgrades for the upcoming calendar year. Each year thereafter until the termination of this Order, Respondent shall submit a revised Annual Work Plan. The subsequent Annual Work Plans shall be due by January 31 of each year. Annual Work Plans shall indicate Respondent's progress in completing work identified in prior Annual Work Plans in summary format and Respondent's intended future efforts to mitigate the SSO at Outfall 002 pursuant to Subsection C. of this Compliance Schedule. Annual Work Plans shall include Department approved construction schedules submitted in accordance with this Compliance Schedule. Significant deviations from an approved Annual Work Plan must be applied for in writing and approved by the Department, which approval shall not be unreasonably withheld, denied, or delayed. The Annual Work Plan shall include proposed mitigation measures which, at a minimum, satisfy the milestone set forth in Subsection C.1 of this Compliance Schedule. Upon approval by the Department, the schedules contained in the Annual Work Plans will be affixed to and become an enforceable part of this Order.

### **SCHEDULE B- DEFINITIONS**

Terms used in this Order which are defined in Article 17 of the Environmental Conservation Law of the State of New York (ECL) or in regulations promulgated under Article 17 of the ECL shall have the meaning ascribed to them in Article 17 of the ECL or in the regulations promulgated thereunder. Whenever the terms listed below are used in this Order, the following definitions shall apply:

1. "CCTV" shall mean an inspection technique that uses a closed-circuit television camera to observe the interior condition of a sanitary sewer segment.
2. "CMOM" shall mean capacity, management, operations, and maintenance program of accepted industry practices to properly manage, operate, and maintain sanitary wastewater collection, transmission, and treatment systems.
3. "Consent Order" or "Order" shall mean Consent Order R620060823-67 and all appendices hereto, including any amendments thereto.
4. "Oneida County" or "County" shall mean Oneida County, New York, and any of its successor departments or agencies, as well as any contractors, consultants, or agents representing the County.
5. "Department" shall mean the New York State Department of Environmental Conservation and any of its successor departments or agencies.
6. "Department standards" shall mean the 2004 edition of Recommended Standards for Wastewater Facilities by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers.
7. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
8. "Force main" means any pipe that receives and conveys wastewater under pressure from the discharge side of a pump installed in a pump station.
9. "Infiltration" shall mean water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes, as provided in 6 NYCRR Part 750-1.2(a)(45).
10. "Inflow" shall mean water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross-connections between storm sewers and sanitary sewers, catch

basins, cooling towers, stormwater, surface runoff, street wash waters, or drainage, as provided in 6 NYCRR Part 750-1.2(a)(46).

11. "I/I" shall mean the total quantity of water from Infiltration and Inflow without distinguishing the source.
12. "Outfall 002" shall mean the terminus of the overflow sewer at the SCPS at the point of emergence with the Mohawk River, as defined in SPDES permit NY-0025780.
13. "Permit" or "SPDES Permit" shall mean State Pollutant Discharge Elimination System (SPDES) permit number NY-0025780 issued to the County pursuant to Title 8 of Article 17 of the Environmental Conservation Law of New York State for the WPCP and any future extended, modified, or reissued permit therefore.
14. "Sanitary Sewer Overflow" or "SSO" shall mean any spill, release, or bypass of wastewater from the sanitary sewer system to the waters of the state, as well as any release of wastewater from the sanitary sewer system to public or private property that are not caused by blockages, flow conditions, or malfunctions in a private lateral or conveyance system that is not owned or operationally controlled by the County or Satellite Municipality.
15. "Sanitary sewer segment" shall mean that part of a sewer line that is between one manhole and the next closest manhole on the sewer line in question.
16. "Sanitary sewer system" means the wastewater collection and conveyance system tributary to the SCPS that is owned or operated by the County or Satellite Municipality (including all pipes, force mains, gravity sewers, pump stations, manholes, and appurtenances thereto, but does not in any way include private laterals) that is designed to collect and convey municipal sewage (domestic, commercial, or industrial).
17. "Satellite Municipality" or "Satellite Municipalities" shall mean an incorporated political subdivision within or partly within the Oneida County Sewer District that conveys sanitary sewage to the SCPS which includes the town of New Hartford, town of Paris, town of Whitestown, village of Clayville, village of New Hartford, village of New York Mills, village of Oriskany, village of Yorkville, and the village of Whitesboro.
18. "SCPS" or "Pump Station" shall mean the Sauquoit Creek Pump Station which is owned and operated by the County and is located in the village of Yorkville, town of Whitestown, New York.
19. "WPCP" shall mean the Oneida County Water Pollution Control Plant, including all of its components, located at 51 Leland Avenue, Utica, New York.