

RESPONSIVENESS SUMMARY

ATTACHMENT 1

Comment and Response Index

**Onondaga Lake Consent Decree, ESD, and SCA Siting Report Responsiveness Summary
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Name/Agency	Comment Code	Comment Summary	Response
Onondaga Nation Comments			
Christopher A. Amato, General Counsel for Onondaga Nation	N-1.1	On behalf of the Onondaga Nation, Stratus Consulting states that the technical support document for the Explanation of Significant Differences (ESD) prepared by Parsons for Honeywell and the proposed ESD did not provide sufficient information to allow a complete evaluation of the new aspects of the remedy described in the proposed ESD. As a result, the Nation requested further information on the ESD in a letter addressed to EPA dated October 19, 2006. The EPA responded in a letter dated October 31, 2006. We have attached these letters so that they may become part of the administrative record for the Consent Decree.	NYSDEC adopts EPA's October 31, 2006 responses to the Nation's October 19, 2006 letter to EPA.

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	N-1.2	<p>The rationale that the proposed change to the remedy does not constitute a fundamental change because it represents a change affecting only 6% of the total volume of sediment to be dredged from the lake is valid if:</p> <p>1) the significantly lower volume of NAPLs determined in the Preliminary Design Investigation (PDI) and reported in the proposed ESD is accurate</p> <p>2) remedial design does not significantly alter other portions of the remedy for the rest of the Onondaga Lake Bottom subsite. In addition, accompanying technical reports summarizing the results of the PDI should be provided to the Nation.</p>	<p>The estimate of the pooled NAPL, and the corresponding volume of sediments to be dredged from the lake to address NAPL developed in the FS and used to support the ROD were based on a limited in-lake data set and the offshore extrapolation of the geometry and permeabilities of the stratigraphic units from the known onshore configurations and permeabilities of these units. The estimate of the pooled NAPL and the corresponding volume of sediments to be dredged from the lake to address NAPL identified in the proposed ESD is based on the collection and analysis of more than 65 sediment cores to depths ranging from 28 to 42 feet. Since the latter estimates were based on a more extensive investigation, analysis and observation of these sediment cores, they provided a better empirical basis for estimates of the volume and areal and vertical extent of NAPLs than the estimates developed for the ROD. Since the remedy still includes all of the major remedy components (as discussed in the response to Comment O-5.4) including dredging and capping, there has not been a fundamental change to the remedy selected in the ROD. As the remedial design and remedial action proceed, any significant or fundamental changes to the ROD remedy would need to be documented via an ESD or ROD amendment, respectively. A data summary report for the first phase of the PDI is under development. It will be furnished to the Onondaga Nation and will be placed in the document repositories as soon as it is available. In the interim, EPA sent to the Nation, via overnight mail on November 29, 2006, data compilations from the PDI. Also, see responses to Questions # 12, 15, 18, and 19 in the October 31, 2006 letter from EPA to the Onondaga Nation.</p>

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	N-1.3	<p>Onondaga Lake provides unique and important ecological and recreational services to the general public, and critically important cultural services to the Onondaga Nation. The proposed loss of roughly two acres of Onondaga Lake surface area is of particular concern to the Nation and the prevention of lake surface losses was identified as one of the key elements of the ROD. NYSDEC and EPA should allow changes to the ROD that permanently eliminate parts of the lake only as a last resort and only when public health and welfare cannot otherwise be protected. However, information provided to date suggests that little effort was put into developing and evaluating alternatives that would preserve the lake surface area, and that the new remedy was perhaps chosen based on other factors, such as ease of implementation and cost.</p>	<p>NYSDEC and EPA recognize the longstanding cultural and historical ties of the Onondaga Nation to Onondaga Lake as well as the uniqueness and importance of the lake to the general public. It is acknowledged that any remedy which would involve the filling in of a portion of the lake should only be implemented if the proposal is reasonable and necessary and would not endanger public safety, health and welfare. With respect to addressing pooled NAPLs in the littoral area of the lake adjacent to and near the causeway, the proposed modified remedy was determined to be protective of human health and the environment, implementable, and capable of meeting State and federal regulatory requirements. All alternatives which would include deep dredging (including the ROD remedy) are not implementable due to geotechnical stability concerns. While the proposed modification would include the loss of approximately two acres of aquatic habitat in the lake, the lost aquatic habitat would be replaced with a new aquatic habitat in an upland area adjacent to the lake. It should also be noted that while it is anticipated that the proposed modification could be implemented at less cost than the ROD remedy due to the reduction in volume of sediments to be dredged, any such cost savings have not been quantified. Cost increases attributable to the construction of the barrier wall farther into the lake waters; the construction, operation and maintenance of additional NAPL collection wells; the increased backfilling behind the barrier wall; and the mitigation (replacement) of the aquatic habitat that would be lost behind the barrier wall would offset, at least to some extent, any cost savings from reduced dredging volumes. Also, see responses to Questions # 4 and 8 in the October 31, 2006 letter.</p>

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Name/Agency	Comment Code	Comment Summary	Response
	N-1.4	<p>The ROD-selected remedy is far preferred over the new remedy presented in the proposed ESD because the ROD remedy involves the removal of NAPL from the site, while the latter is largely based on containment, with comparatively little NAPL removal through extraction wells. Because it leaves pooled NAPL in the subsurface, the new remedy described in the proposed ESD presents a higher risk of further exposure and contamination of the lake bottom. It is also surprising that other alternatives involving NAPL removal/destruction were not considered or evaluated further. These include recent developments of in-situ treatment methods such as enhanced biodegradation or the use of granular iron materials. The concern that methods may be unproven in the field (in-situ treatment methods were rejected for that reason in the FS report) is insufficient reason for rejection, particularly since pilot studies are being used in other parts of the ROD to test new treatment methods (e.g. oxygenation of the profundal zone) and the remedy in the proposed ESD includes so many negative aspects, including loss of lake area and retainment of NAPL in the subsurface.</p>	<p>As discussed in the draft ESD and the supporting technical documents, the ROD remedy is not implementable due to geotechnical stability concerns. The proposed modified remedy was determined to be protective of human health and the environment, implementable, and capable of meeting state and federal regulatory requirements. To the extent that NAPLs are not collected by the recovery wells, they would be isolated from the lake and contained by the subsurface barrier wall and groundwater collection system. The modified remedy would not present a higher risk of exposure to humans or ecological receptors or potential release of contamination to the lake. With respect to in-situ treatment methods to address NAPLs, NYSDEC and EPA are not aware of any contaminated sediment sites where such methods have been implemented to remediate NAPLs in sediments. A pilot study would need to be performed to assess the feasibility of in-situ treatment methods to remove or destroy NAPLs. However, the performance of a pilot project to assess in-situ treatment methods would delay the installation of the barrier wall and the containment of groundwater contamination from the upgradient Semet Residue Ponds and Willis Avenue Subsites. The expeditious containment of the contaminated groundwater from these subsites is essential to eliminate an ongoing source of contaminants to the lake and is also a prerequisite for the remediation of the Lake Bottom in SMU 1 and SMU 2. Monitoring will be performed to determine the effectiveness of the NAPL recovery wells and the barrier wall and groundwater collection system. If, based on the monitoring data, further actions are determined to be necessary (e.g., modification of recovery well system, potential use of in-situ treatment), they will be evaluated.</p>

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	N-1.5	<p>The estimated volume of NAPL in the proposed ESD of 5,000 cy is significantly less than the 232,000 cy estimate in the ROD. The accuracy of the estimate is critical. Technical report(s) detailing the results of the PDI and other relevant studies performed by Honeywell in the area need to be provided to the Nation.</p>	<p>As is discussed in the detailed response to Comment N-1.2, since the estimates in the proposed ESD were based on a more extensive investigation, the analysis and observation of these sediment cores provided a better empirical basis for estimates of the volume and areal and vertical extent of NAPLs than the estimates developed for the ROD.</p> <p>EPA has provided extensive information to the Nation regarding the draft ESD and other Onondaga Lake-related issues. This includes copies of various reports and work plans, as well as written responses (e.g., October 31, 2006 letter from George A. Shanahan of EPA to Christopher A. Amato of Dreyer Boyajian LLP; November 29, 2006 e-mail from Robert Nunes of EPA to Christopher A. Amato) to a number of questions posed by the Nation. Furthermore, the EPA and NYSDEC have met with the Nation on several occasions to discuss various issues associated with Onondaga Lake and several upland sites. With regard to technical report(s) detailing the results of the PDI and other relevant studies, a data summary report for the first phase of the PDI is under development and will be furnished to the Nation and placed in the document repositories as soon as it is available. In the interim, analytical data from the first phase of the PDI was provided to the Nation.</p>
	N-1.6	<p>The commentator states that, "...many of the reports produced by Honeywell and its subcontractors have not been provided to the Nation. The Nation should have direct access to the full contents of all reports pertaining to the site so that a complete evaluation is practical."</p>	<p>Please see the response to Comment N-1.5.</p>

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Joseph J. Heath, General Counsel for Onondaga Nation	N-2.1	The State has failed to seriously consider or respond to issues that the Onondaga Nation has raised with respect to the remedy proposed in the ROD. The NYSDEC has disregarded the Onondaga Nation's legitimate, deeply held spiritual and cultural interests with respect to Onondaga Lake.	Contrary to that indicated in the comment, NYSDEC has not disregarded the Onondaga Nation's interests with respect to Onondaga Lake. Please see the response to Comment N-1.5.
	N-2.2	The commentor states that, "Although the proposed Consent Decree enumerates the steps taken by the State in order to ensure compliance with the court's schedule and the applicable statutory requirements, we note that the State and U.S. Environmental Protection Agency have used the court's schedule as an excuse to evade their responsibility to consult with and take into account the comments and concerns of the Onondaga Nation with respect to this matter."	Please see the responses to Comments N-2.1 and N-1.5.
	N-2.3	The commentor states that, "We urge the NYSDEC to reevaluate its position with respect to the Nation prior to submitting its final consent decree implementing the ROD to Judge Scullin for his approval. As you know, Judge Scullin may not approve this document if he determines that it is not in the public interest and consistent with the [National Oil and Hazardous Substances Pollution Contingency Plan (NCP)]."	The State finds the Consent Decree to be in the public interest, as is documented in Paragraph 17 of the Consent Decree. The State also finds the remedy to have been chosen in accordance with the NCP, as is stated in the Declaration of the ROD, which is signed by both NYSDEC and EPA. Please also see the response to Comment G-2.1.

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	N-2.4	The commentor states that, "At a minimum, as discussed in detail below, we urge New York State to require the defendant Honeywell International ("Honeywell") to provide copies of all documents produced under this consent decree to both the U.S. Environmental Protection Agency and to the Onondaga Nation, as a means of improving communication and facilitating consultation with the Nation."	There is pending litigation between Honeywell and the State of New York. NYSDEC cannot allow a blanket release to the Onondaga Nation of any and all documents that may be generated internally or received from Honeywell that are or may be relevant to the Consent Decree. As lead agency at the Lake Bottom Subsite, NYSDEC provides copies of relevant documents to EPA on a continuing basis. Honeywell provides copies of submissions to EPA pursuant to the terms of the Consent Decree. EPA is providing the Onondaga Nation with quarterly updates and is sharing documents with the Nation concerning the Onondaga Lake subsites according to a specified protocol. NYSDEC facilitates EPA efforts to do so.
	N-2.5	The commentor states that, "There is no credible reason for New York State to defer the requirement that Honeywell International provide financial assurance for the cleanup. To wait until the State, by some unspecified mechanism, divines that financial instability threatens Honeywell's ability to complete the actions required by the consent decree is inconsistent with CERCLA and the [NCP]. The time to assure financial stability is present. Rather than making the bald assertion that the State "has no reason to doubt" that Honeywell has the resources to complete the cleanup, the consent decree should state, if true, that Honeywell meets the financial test set forth at 40 CFR 264.143(f), that Honeywell will evaluate its financial situation quarterly and shall certify to the State that it continues to meet such test, or, if it cannot so certify, shall immediately secure financial assurance in one of the listed forms, consistent with the requirements of 40 CFR 264.143."	Please see the response to Comment R-2.4.

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	N-2.6	<p>The commentor states that, "We note that paragraph 84 [of] the proposed consent decree requires that copies of documents subject to State approval be submitted to the document repositories and to this office. The Onondaga Nation recognizes the importance of its role as a consulting party with respect to Onondaga Lake pursuant to both CERCLA and §106 of the National Historic Preservation Act. Therefore we request, as an aid to consultation and effective participation, that this office be included in the list contained in paragraph 82 rather than the paragraph 84 list so that we may timely be advised of significant issues related to the cleanup."</p>	<p>Paragraph 82 governs Honeywell's obligations to provide specified numbers of copies of its submissions to the State (a party to the pending litigation), and to EPA (the agency responsible for the implementation of CERCLA and a cosigner of the ROD for the Onondaga Lake Bottom subsite). Pursuant to paragraph 84 of the Consent Decree, Honeywell will, provide approved documents generated pursuant to the Consent Decree directly to the Onondaga Nation. EPA is also providing the Onondaga Nation with quarterly updates and is sharing documents according to a specified protocol.</p>

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	N-2.7	<p>The commentor states that, "We do not understand why the penalties stipulated in paragraph 56 do not escalate to the statutory maximum in the event of extreme delays in performance, for example for noncompliance for periods exceeding 45 days. Noncompliance of this magnitude would be too serious to warrant anything less."</p>	<p>NYSDEC's Superfund settlement documents tend to address penalties in one of two ways. Some consent orders or consent decrees may be silent as to the amount of penalties to be imposed per day of a continuing violation. If so, then, if a violation of the settlement document occurs, it may be left to an administrative or civil court judge to review evidence and issue a finding as to the per day penalty amount to be imposed, which amount may be anything up to the statutory maximum. Such findings are issued with the delays, burdens, costs and uncertain outcomes that may be associated with litigation. Other consent decrees include an agreement or "stipulation" to a per day penalty amount that is less than the statutory maximum but which is automatically imposed without the need for recourse to the courts before a per day penalty amount is determined. In paragraph 56 of the Consent Decree, Honeywell and the State of New York have agreed to stipulated penalties.</p> <p>Pursuant to the terms of the Consent Decree, if a period of violation lasts 30 days, the stipulated penalty would amount to \$90,000. Thereafter, stipulated penalties would continue to increase at a rate of \$10,000 per day. Should a violation continue for 45 days, for example, the stipulated penalty would be \$240,000. Should a violation continue for four months, the penalty would reach or exceed \$1 million. The total penalty would be due within 15 days of the State's notification to Honeywell of the violation. Honeywell's failure to pay would compound the penalty with 9% interest. The stipulated penalties in the Consent Decree are agreed to in advance, would begin to accrue immediately, and would be payable by Honeywell with a relative minimum of procedural delay. This allows resources to be focused on resolving the violation itself rather than on first spending an indeterminate amount of time arriving at a per day penalty dollar amount to be imposed.</p>

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	N-2.8	<p>The commentor states that, "It is critical to delete the parenthetical "(including prohibitively severe or extraordinary weather conditions which materially interfere with implementation of the Remedial Program)". This phrase obscures and makes unclear what is meant by an "event beyond the control of Honeywell or its agents in carrying out Honeywell's obligations under this Consent Decree which cannot be overcome by their due diligence" and suggests that weather is in some way subject to a lesser standard than "due diligence." Who decides what is prohibitively severe or extraordinary? What is material interference as opposed to immaterial interference?"</p>	<p>Approved investigation and remedial work plans may include schedules that require year-round work in the field. Schedules approved pursuant to administrative consent orders have required Honeywell to continue field activities, depending on the specific facts of the project, at various Onondaga Lake subsites during the winter. However, in the Syracuse area, there are times when severe weather events may cause the reasonably prudent person to stop work in the field, despite contractors having been retained for a pre-determined time period, and despite any increased costs to the responsible party that may be associated with such a delay. In the event of such severe weather events, this exception in Paragraph 57 of the Force Majeure provision in the Consent Decree acknowledges that it is not the intention of the State of New York to penalize Honeywell (or any responsible party) for its diligent efforts that are, nonetheless, temporarily thwarted by severe weather that makes it unreasonable for its staff and contractors to continue their work. Generally speaking, this type of delay tends to be short-lived. It is specific to a particular weather event, rather than to general seasonal conditions, which are taken into account when the original work plan schedule is developed and approved by NYSDEC in the first instance.</p> <p>It is Honeywell's obligation to notify the State should it find that severe weather conditions warrant a delay. Then, the State must also agree and approve Honeywell's judgment call. If the State does not agree, no delay in the relevant work schedule is approved and Honeywell is in violation of the Consent Decree unless the company both timely initiates the dispute resolution process and prevails in it. Even if Honeywell were to prevail, it would only be entitled to an extension of time that may not exceed the period reasonably attributed to the severe weather event.</p>

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	N-2.9	The commentator states that, "... it is critical that Honeywell also prepare a citizen participation plan that contains clear guidelines for incorporating citizen input into remedial design and monitoring plans."	The Consent Decree (at paragraph 29.H) requires Honeywell to prepare a "citizen participation plan which incorporates appropriate activities outlined in the DEC's publication, Citizen Participation in New York's Hazardous Waste Site Remediation Program -- A Guidebook, dated June, 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375." Under the Consent Decree, this plan will be subject to NYSDEC review and approval. It will address various issues including the manner in which NYSDEC will involve the public and various stakeholders during the design and construction phases of the project.

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	N-2.10	<p>In light of the critical importance of monitoring not only to the remedial design process, but to the ultimate ability to ascertain attainment of the remediation, the vagueness of the Consent Decree text leaves room for multiple interpretations which could lead to problems with enforceability. What kind of needs are to be monitored? Who decides what these "needs" are? What does it mean to "integrate" needs? What standards apply to the selection of monitoring approaches? For how long "subsequent" to implementation must monitoring continue? Who will decide?</p> <p>The lack of clearly articulated goals is the most serious flaw in the ROD. To the extent that the effectiveness of the remedy is to be ascertained in any meaningful way, pre-implementation monitoring of relevant parameters, including food chain monitoring of mercury and other toxic compounds should be included as a substantial component of the remedial design. The Consent Decree language should be revised to be more specific about the role that monitoring is to play in the remedial design process.</p>	<p>The Consent Decree was not intended to provide specific details regarding the monitoring program. Instead, the Consent Decree text (para 29.B.vi) refers to the development during remedial design, of a program to monitor the effectiveness of the remedy. The monitoring program will address the various monitoring aspects associated with the lake remedy both during and following remedy implementation. The monitoring program will include the necessary monitoring components ("integrate needs") both on-site and off-site. Honeywell will need to develop a monitoring program that is acceptable to NYSDEC. Monitoring will be performed as long as is necessary (as determined by NYSDEC and EPA) to ensure the continued effectiveness of the remedy. Please also see the response to Comment R-2.2.</p> <p>In regard to remedial goals, the selected remedy addresses all areas of the lake where the surface sediments exceed a mean probable effect concentration quotient (PECQ) of 1 or a mercury PEC of 2.2 milligrams per kilogram (mg/kg). The selected remedy will also attain a 0.8 mg/kg bioaccumulation-based sediment quality value (BSQV) for mercury on an area-wide basis for the lake and for other applicable areas of the lake to be determined during the remedial design. The selected remedy is also intended to achieve lakewide fish tissue mercury concentrations ranging from 0.14 mg/kg (which is for protection of ecological receptors) to 0.3 mg/kg (which is based on EPA's methylmercury National Recommended Water Quality criterion for the protection of human health for the consumption of organisms).</p> <p>As part of remedial design, an extensive baseline (pre-implementation) monitoring program will be developed and implemented. The baseline monitoring work plan will address the scope of monitoring (media to be sampled and analyses to be performed) and the means by which the monitoring data will be interpreted.</p>

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	N-2.11	<p>The commentor states that, "Paragraph 24 contains several references to "the Site" which is not elsewhere defined in this Consent Decree. In subparagraph D, for example, the Remedial Design Work Plan is required to include "a plan to secure physical security and posting of the Site." Which site is referred to? The Onondaga Lake Superfund Site? The Lake Bottom Subsite as referenced in paragraph 4? Subparagraphs E and F are similarly vague, and therefore the enforceability of these provisions is doubtful. This language should be revised."</p>	<p>The Onondaga Lake Bottom subsite is defined as the "Site" in paragraph 21.A.</p>
	N-2.12	<p>The commentor states that, "The Onondaga Nation continues to oppose the implementation of the remedy contained in the ROD, which is to be memorialized by this proposed Consent Decree. The plan itself, and thereby the Consent Decree are together inadequate. It is inappropriate for the NYSDEC to sanction a plan that will leave dangerous, carcinogenic, and highly mobile chemicals and heavy metals in Onondaga Lake.</p> <p>The levels of these dangerous and carcinogenic toxins which will be left if this Consent Decree is entered will exceed the agency's own "safe" levels. In the final analysis, the Lake will remain a Superfund site after this remedial action. This plan is not in the public interest, nor is it consistent with the NCP. The consent decree should not be entered."</p>	<p>This comment (as well as several other comments addressed in this Responsiveness Summary) relates to matters (i.e., remedy selection) outside the scope of the present comment period on the proposed Consent Decree, draft ESD, and Siting Evaluation for the Sediment Consolidation Area (SCA). Please see the section entitled "Summary of Public Comments" of the Responsiveness Summary for more information. However, NYSDEC provides the following response as part of its continuing commitment to be responsive to the public regarding comments and questions regarding the remedial program for Onondaga Lake.</p> <p>Please see response to Comment O-5.2.</p>

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Regional Comments			
Irwin L. Davis, President, Metropolitan Development Association of Syracuse & Central New York Inc.	R-1.1	The commentor supports the plan.	Comment noted.
	R-1.2	The plan should be implemented now, with no further delays or studies.	NYSDEC and Honeywell are pursuing the implementation of the remedy aggressively. As is typical for Superfund site projects, once a remedy has been selected, additional pre-design investigation information is required to fully implement the design. The Statement of Work contained in the Consent Decree indicates that five years will be required to collect these additional data and complete the design, as well as to construct the sediment consolidation area (SCA) and associated water (supernatant) treatment plant. NYSDEC and Honeywell are already very actively involved in the pre-design process, with Honeywell having collected many design-related samples since the ROD was released. In addition, some of the ancillary construction projects (at the upland sites) that are required to be in place before the complete implementation of the Lake Bottom Subsite remedy either are or will be soon underway. The remediation of the LCP Bridge Street site is nearing completion and the installation of the barrier wall and associated containment system along the lake shoreline has already begun. Construction and performance testing of the treatment plant that will be used to treat the groundwater collected behind the barrier wall along the lake shore have been completed.
Nicholas J. Pirro, County Executive, Onondaga County	R-2.1	The commentor supports the plan.	Comment noted.

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	R-2.2	It is essential that Onondaga County continue to play an integral role in the review and evaluation of critical documents that will guide the further development and implementation of this effort, such as the Remedial Design Work Plan and Remedial Design.	<p>NYSDEC conducted an extensive public outreach program prior to the selection of the Lake Bottom remedy by NYSDEC and EPA. This included public meetings, public availability sessions, meetings with various stakeholders (including Onondaga County), and the solicitation of public comment regarding the proposed remedy. More recently, NYSDEC held a public meeting and public availability session and solicited public comment regarding the proposed Consent Decree, the draft ESD, and the SCA Siting Fact Sheet.</p> <p>NYSDEC will continue to conduct an extensive public outreach program throughout the remedial design and construction phases. These activities are anticipated to include the holding of public meetings and the distribution of fact sheets, etc., on a periodic basis, as well as at key stages of the project, such as during the design of the SCA. This will also include meetings with various stakeholders, including Onondaga County. The objective of the outreach program will be to update the public and stakeholders on the project status, as well as to solicit public comment.</p> <p>As part of public outreach, final documents will be placed in the document repositories and made available for public review once they are available. Please also see the response to Comment R-2.7.</p>

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	R-2.3	<p>The commentor states that, "The Consent Decree refers to a "schedule" that will be developed as part of the Remedial Design and spells out stipulated penalties that can be imposed if whatever schedule is developed is not met. Yet the Consent Decree does not require any major or minor milestones around which penalties can be imposed. Absent a requirement for milestones in the Consent Decree, it is not clear to the County how the State can require milestones and associated stipulated penalties to ensure that implementation of the ROD will proceed as anticipated. This appears to be a weak point in the Consent Decree."</p>	<p>The Consent Decree requires Honeywell to submit various detailed schedules for approval. For example, Paragraph 24 of the Consent Decree requires Honeywell's Remedial Design Work Plan to include a schedule for the performance of design activities and the submission of design reports, and Paragraph 31 requires remedial construction activities to be done in accordance with the approved remedial design (including the schedule).</p> <p>Pursuant to Paragraphs 40-43 of the Consent Decree, NYSDEC will review and comment on each of these draft schedules. Honeywell must then revise each schedule according to the comments and resubmit it to NYSDEC for a second review and possible approval. It is during this review and comment process that major and minor milestones are developed, discussed in detail between the parties and, if necessary, required by NYSDEC's comments to be made more aggressive. Failure to submit an approvable revised schedule would constitute a violation of the Consent Decree. Should a schedule be approved, Paragraphs 26 and 31 of the Consent Decree require Honeywell to comply with it. Paragraphs 55-56 indicate that any failure to comply with the Consent Decree, which would include the failure to comply with an approved schedule, may be a violation of the Consent Decree that is subject to stipulated penalties.</p>

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	R-2.4	The commentor states that, "In light of well documented recent history of problematic disclosure statements, the financial assurance provisions of the proposed Consent Decree would seem to afford little actual security that the required funds to implement, monitor and repair or replace remedial elements if and when necessary will be available. While there is no reason to question the integrity of Honeywell's financial disclosures and current financial strength, it would seem prudent to insist on obtaining clear evidence and disclosure of the actual plans and mechanisms for financing this substantial obligation. The bottom line with respect to this concern is that the State must provide absolute assurance that responsibility for completion, repair or replacement of the remedies called for in the ROD do not fall back on the taxpayers of Onondaga County."	The requirements of Paragraphs 68-73 of the Consent Decree require Honeywell to provide the State with an annual reporting of its financial status and to provide specific financial assurance in the event the State determines that Honeywell is unable to complete the Remedial Program. It should be noted that financial assurance is not routinely required in the context of state cleanup orders, but was considered and included in this Consent Decree in response to public comment on the ROD. The State believes that the provisions of the Consent Decree provide adequate assurances for the completion of the remedial program. Further, should Honeywell fail to maintain adequate funds to complete the cleanup, the state and/or federal Superfunds may be drawn upon to complete the cleanup.
	R-2.5	The commentor states that, "The County notes that Natural Resource Damages (NRDs) are not addressed as part of the Consent Decree. Please explain the relationship between the Consent Decree and NRDs."	The complaint filed in New York federal district court by the State of New York against Honeywell in 1989 commenced a lawsuit that is pending. That complaint asserts numerous claims, including a claim for natural resources damages under the federal Superfund law, CERCLA. The Consent Decree that is currently the subject of public comment seeks to resolve a different claim of New York State stemming from the same complaint. The claim for natural resources damages is not resolved by the pending Consent Decree.

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	R-2.6	What will happen under a worst-case scenario (i.e., the remedy fails)? How can or will the State pursue further remedial action with Honeywell?	Post-remediation monitoring and maintenance of the cap and other components of the remedy will ensure that the remedy will not fail. In addition, as is noted in the ROD on page 81, because this remedy would result in contaminants remaining on site above levels that allow for unlimited use and unrestricted exposure to site media, CERCLA requires that the site be reviewed at least once every five years. The five-year review will formally evaluate the results from monitoring programs established as part of this remedy to ensure that the remedy remains protective of human health and the environment. Based on these reviews, it is possible that NYSDEC and EPA could pursue further remedial action with Honeywell, which would be addressed through a modification of the ROD and/or the Consent Decree.
	R-2.7	Onondaga County should be included in the list of document recipients noted in the Consent Decree.	The interests of stakeholders, including Onondaga County, will be addressed through the Citizen Participation Program.
	R-2.8	The commentor states that, " It is unclear to the County why there are no provisions in the Consent Decree for Honeywell to pay the cost of a dedicated State Monitor or Monitors to track progress and provide critical review of document submittals..." and "Why are there no provisions for State Monitors in the Consent Decree? "	Pursuant to the Consent Decree, NYSDEC staff will oversee Honeywell's implementation of the remedial program for the Onondaga Lake Bottom Site. As part of this oversight, NYSDEC will provide field oversight, review and comment on the various reports to be generated, and provide other project management duties. The Consent Decree requires Honeywell to reimburse the State for all response costs incurred by the State related to the Site. While this will not necessarily involve the use of state monitors, it does ensure that the State will be reimbursed for all costs incurred while overseeing this important project.
	R-2.9	The commentor states: ".....the WTP facility has the potential to encounter elevated concentrations of mercury containing a significantly higher percentage of methyl mercury. Depending on the actual discharge volumes and concentrations, the methyl mercury fraction could represent a very large methyl mercury point source."	NYSDEC shares the concern that significant levels of mercury (including methyl mercury) may be encountered at the wastewater treatment plant (WTP). The WTP will be designed to meet discharge limits issued by NYSDEC for this facility.

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	R-2.10	<p>The commentor states that, "In order to enable any future modification of the proposed mercury related permit effluent limit for the WTP to be addressed through the modification provisions of paragraphs 36 and 37 of the Proposed Decree the NYSDEC should ensure that Honeywell is fully aware that the facility may not be subject to a fixed limit of 0.2 µg/l (200 ppt) for the entire life of the facility, and that the State reserves its right to modify that limit if circumstances warrant such a modification.</p> <p>The only way to be certain whether circumstances in fact warrant such a modification would be to explicitly require low level mercury and methylmercury monitoring of the Honeywell WTP."</p>	<p>The Department of Environmental Conservation has the responsibility to establish discharge limits (which meet the substantive requirements of a SPDES permit) for remediation work conducted pursuant to Superfund orders. The numbers are determined using applicable law, regulation and guidance. Site specific limitations are established where appropriate. The selected discharge limit for mercury of 200 ng/l takes all of these into consideration.</p> <p>Limits are established through regulation to be protective of public health and the environment. The previous limit applied to mercury discharges on a state wide basis was 800 ng/l since that was the lowest level that could be measured accurately using the accepted USEPA Method 245. The water quality-based effluent limit (WQBEL) for mercury is 0.7 ng/l. However, after performing a rigorous review for the statewide limit, NYSDEC determined that 0.7ng/l is not a reasonable or feasible discharge level for mercury with currently available technology.</p> <p>6NYCRR Part 750-1.11(a) identifies the use of Best Available Technology (BAT) and Best Professional Judgment (BPJ), consistent with CWA Section 301 and 40 CFR, in SPDES permit development. The development and implementation of the 200 ng/l limit was based on these methodologies and is consistent with the manner in which the Department is currently implementing mercury monitoring requirements at industries and remediation sites across the State. This limit is attainable with current technology.</p> <p>NYSDEC's review of Best Available Technology indicates that conformity to the 0.7 ng/l standard is inappropriate because it is technically impractical. The discharge of 6 million gallons per day of water from the hydraulic dredging operation can not be reasonably treated to that level. The wastewater will be variable in nature as to the particular types of contaminants and their concentrations. To achieve the maximum removals of mercury would generally require a highly consistent influent and much lower volumes.</p>

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	R-2.10 (cont.)		<p>Applying a limit of 200 ng/l, and using USEPA method 1631 to assess compliance with this limit, will allow for development and implementation of an advanced treatment system that can be reasonably operated and maintained to meet the discharge criteria. This limit is consistent with the limits being applied to other mercury discharges across New York State, including the Metropolitan Sewage Treatment Plant and the GE Hudson River cleanup. Note that the Statement of Work, which is attached to the Consent Decree, provides for a fixed discharge limit for mercury of 0.2 ug/l.</p>

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	R-2.11	<p>A baseline monitoring program should begin immediately .</p> <p>The development of the post-construction monitoring program must involve the County and other appropriate stakeholders.</p>	<p>Similar to Comment N-2.12, this comment relates to matters (i.e., remedy selection) outside the scope of the present comment period on the Consent Decree, draft ESD, and Siting Evaluation for the SCA. However, NYSDEC provides the following response as part of its continuing commitment to be responsive to the public regarding comments and questions regarding the remedial program for Onondaga Lake. We agree that a baseline monitoring program should be developed and implemented as soon as possible. It is likely that portions of the pre-design investigation will result in the collection of data that is applicable to the baseline monitoring program. Please also see the responses to Comments N-2.9 and R-2.2.</p>

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Local Comments			
Mary Ann Coogan, Supervisor, Town of Camillus	L-1.1	The Town of Camillus believes that the SCA should be placed in the lake or along the lakeshore.	NYSDEC acknowledges that the Town of Camillus had previously made the comment that the SCA should be placed in the lake or along the lakeshore. As was noted in the ROD's Responsiveness Summary*, the final location for the SCA had not been determined at that time. As is stated in the ROD, potential SCA locations included Wastebeds 1 through 8, Wastebeds 9 through 11, and Wastebeds 12 through 15. For cost-estimating purposes in the FS report, it was assumed that an SCA would be constructed on one of the Solvay wastebeds (e.g., Wastebed 13). Wastebed 13 could accommodate a large sediment volume (potentially 2,400,000 cy or more, depending on final elevation), and its relatively remote location would minimize disruption to and impacts on the community during construction and operation of an SCA. However, the ROD stated that the actual Solvay wastebed location(s) on which the SCA(s) would be constructed would be determined during remedial design and be based on an evaluation of the potential impacts on the local community, geotechnical stability of the wastebeds, SCA construction requirements, wastebed size, the means for transporting dredged materials to the SCA, costs, etc. This assessment and these considerations were documented in the Onondaga Lake SCA Siting Evaluation Report which was offered for public comment during the public comment period which ran from October 12, 2006 through November 13, 2006. This report recommended that Wastebed 13 be utilized as the site for the SCA. NYSDEC and EPA agree with this recommendation.
	L-1.2	The Town of Camillus is prepared to play an active role in the design review phase so that our residents can be assured of no environmental impacts on their lives from this project.	Please see the responses to Comments N-2.9 and R-2.2.

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	L-1.3	The commentor states that, "...the westerly extent of the SCA should be set back from the westerly berm of Wastebed 13 by at least 500 feet to provide a visual and noise buffer, and to provide a contingency response area in the event of a spill, leak, or problem with the SCA."	The SCA will be designed and built in accordance with state and federal requirements. Incorporated into the design of the project will be engineering controls and work practices to significantly minimize any odor associated with the cleanup. There also will be measures to minimize possible effects on area residents from noise, lighting, traffic, and/or visual impacts. A full range of options to minimize these potential impacts will be evaluated as part of the design process, including evaluation of the requested setback for the berms. NYSDEC understands that the design, operation and monitoring of the SCA is a significant issue for the local community. As part of the design process, NYSDEC will meet with the local community to discuss these issues and to ensure that everyone's questions are addressed during the SCA design.
Marlene Ward and Nicholas R. Kochan, Mayor and Village Trustee, Village of Liverpool	L-2.1	The Village of Liverpool supports the plan.	Comment noted.

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	L-2.2	How will NYSDEC evaluate the success of the remediation effort in the short and long terms?	<p>Similar to Comment N-2.12, this comment relates to matters (i.e., remedy selection) outside the scope of the present comment period on the Consent Decree, draft ESD, and Siting Evaluation for the SCA. However, NYSDEC provides the following response as part of its continuing commitment to be responsive to the public regarding comments and questions regarding the remedial program for Onondaga Lake.</p> <p>The benchmarks against which the remediation will be measured are reflected in the remedial action objectives (RAOs) and preliminary remediation goals (PRGs) discussed on pages 34 and 35 of the ROD.</p> <p>RAOs are specific goals to protect human health and the environment. These objectives are based on available information and standards, such as applicable or relevant and appropriate requirements (ARARs), to-be-considered guidance, and site-specific risk-based levels. The RAOs for Onondaga Lake were based on site-specific information, including the nature and extent of chemical parameters of interest (CPOIs), the transport and fate of mercury and other CPOIs, and the baseline human health and ecological risk assessments. The RAOs were developed in the RI report as goals for controlling CPOIs within the lake and protecting human health and the environment.</p> <p>In order to achieve these RAOs, PRGs were established to provide additional information/goals with which remedial alternatives could be developed and selected. Onondaga Lake contains three primary media that have been impacted by CPOIs: sediments, biological tissue, and surface water. As is discussed in the ROD, PRGs were developed for each of these three media.</p>

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	L-2.2 (cont.)		<p>In order to assess the attainment of these goals, both the direct implementation of the remedy (e.g., functioning of the water treatment plant, thickness of the cap) and the expected improvements from the remedy (e.g., lack of methylmercury in the water column, reduced mercury concentrations in fish) will need to be monitored. As is discussed in the ROD, part of the selected remedy is the implementation of a long-term operation, maintenance and monitoring program to monitor and maintain the effectiveness of the remedy.</p> <p>The long-term monitoring will be performed to assess the effectiveness of the remedy in achieving the RAOs and PRGs and to ensure that the remedial technologies are performing as specified in the remedial design. The program will be designed to monitor and evaluate the effectiveness of the various remedy components including containment at the SCA, water (supernatant) treatment processes, isolation capping, thin-layer capping, effectiveness of the groundwater control structures, oxygenation, monitored natural recovery, and habitat reestablishment and enhancement. Types of monitoring which will likely be employed include sampling within the lake before, during, and following remediation, including sampling of biological tissue (e.g., fish, invertebrates), measurements of the effects on the environment (e.g., toxicity testing, community analysis), and sampling of surface water and sediments; sampling of the aquatic cap to determine its integrity (chemically and structurally); sampling of the SCA to determine its integrity (chemically and structurally); and sampling of the discharge from the treatment plant to assess conformance with the discharge limits.</p>
	L-2.3	The commenter asks, "What is the revised timetable for remediation?"	As is indicated in the Statement of Work, the project will include an estimated five-year design process for all aspects of the remedial program. During this initial five year program, the water treatment facilities and the SCA will be constructed. This will be followed by in-lake construction activities (e.g., dredging and capping) which are expected to take four years to complete.

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	L-2.4	What is the long-term plan to ensure the performance of the technical systems, including the filtration systems?	<p>Similar to Comment N-2.12, this comment relates to matters (i.e., remedy selection) outside the scope of the present comment period on the Consent Decree, draft ESD, and Siting Evaluation for the SCA. However, NYSDEC provides the following response as part of its continuing commitment to be responsive to the public regarding comments and questions regarding the remedial program for Onondaga Lake.</p> <p>See the response to Comment L-2.2 above.</p>
	L-2.5	The commentor states that, "We strongly recommend the creation of a public oversight forum or board to make sure that the Lake is restored to the best possible level achievable."	<p>Please see the response to Comment R-2.2.</p> <p>The possibility of establishing a group (e.g., board, citizen advisory council [CAC], etc) to provide input during the design and construction phases of the project will be evaluated by NYSDEC and EPA during the early stages of the remedial design.</p>
Deborah S. Warner, Director of Government Affairs, Greater Syracuse Chamber of Commerce	L-3.1	The commentor, on behalf of the Greater Syracuse Chamber of Commerce, supports the plan and urges its swift enactment.	Comment noted. See also the response to Comment R-1.2 above.
Group and Association Comments			
Dereth Glance, Program Director, Citizens Campaign for the Environment (CCE)	G-1.1	CCE recommends that the Department and the Court grant an extension to the public comment period.	After considering the request that an extension to the public comment period be granted, NYSDEC determined that an extension was not necessary. In reaching this decision, NYSDEC noted that CCE was the only party that requested an extension. Further, it is noted that CCE was able to provide its comments in a timely manner.
	G-1.2	Ensure that the lake bottom remediation plan is transparent and provides for citizen participation. Establish a CAC to provide guidance, and support to Onondaga Lake remediation efforts.	Please see the response to Comment R-2.2. The possibility of establishing a group (e.g., board, CAC, etc.) to provide input during the design and construction phases of the project will be evaluated by NYSDEC and EPA during the early stages of the remedial design.

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	G-1.3	The Department should expand upon the Onondaga Lake subsite matrix (that was included in the Responsiveness Summary* for the ROD for Onondaga Lake) to include additional details and resources for more information.	The matrix for the Onondaga Lake Superfund Site addresses the various subsites. As the Onondaga Lake and upland sites progress, NYSDEC will periodically update the matrix to assist the public in understanding the progress of the various remedial projects associated with Onondaga Lake and the various upland sites. NYSDEC will consider adding other types of information (as appropriate) to the matrix as work proceeds on the various sites.
	G-1.4	Onondaga Lake should have educational signage in popular access points.	Although NYSDEC cannot require Honeywell to fund the creation and installation of educational signage (e.g., history, current progress, fish consumption advisories, and resources for more information) around Onondaga Lake, NYSDEC understands the benefits of such signage. Therefore, NYSDEC will discuss with Honeywell the possibility of the creation and installation of educational signs around the lake.
	G-1.5	The commentator states that, "In the case of any dispute over payments to the State or for the remediation effort which is raised by Honeywell, should require Honeywell to deposit the disputed figures in an escrow account until the dispute is resolved [emphasis omitted]."	<p>The State will incur administrative costs during the course of its oversight of Honeywell's performance of its obligations under the Consent Decree. The State will submit invoices to Honeywell periodically for these administrative costs. According to the terms of the Consent Decree, Honeywell will have 30 days to pay these invoices. Pursuant to Paragraph 67, Honeywell may contest an invoice issued by the State and may withhold payment of the disputed portion of the invoiced amount until the dispute is resolved. The Consent Decree provides for the resolution of such a dispute as well as payment on an expedited basis.</p> <p>The projected cost to Honeywell of the Lake Bottom remedy stems from Honeywell's own cost estimates. Honeywell's opportunity to dispute any aspect of the ROD has passed.</p>
	G-1.6	The commentator states that, "If a trust fund is created, the trust fund should be administered by the State of New York and expended solely for the benefit of Onondaga Lake [emphasis omitted]."	Whether administered by Honeywell, its agents, or by the State of New York, a trust fund that may be established pursuant to Paragraph 69.C of the Consent Decree would be expended for the completion of the remedial program for the Onondaga Lake Bottom subsite.

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Edward M. Michalenko, President, Onondaga Environmental Institute	G-2.1	The timing of the ROD and Consent Decree is suspect and leaves the public with the general perception that the settlement between the State and Honeywell was politically motivated. It appears the uncertainty associated with the potentiality of the State adopting a more hard-line position toward environmental regulation under a new governor and administration may have provided both parties impetus to settle.	The Consent Decree is not a product of a conspiracy, political machinations, complicity relative to the timing of matters related to the Syracuse Metropolitan Sewage Treatment Facility, or an economic aid engine. Rather, it is a reasonable and reasoned resolution to the matters addressed by the Consent Decree. The purpose of CERCLA and the State Superfund is to encourage prompt and effective responses to hazardous waste releases and to impose liability on responsible parties. After considerable arm's length negotiations, the proposed Consent Decree was agreed upon by the State of New York and Honeywell. The Consent Decree contains multitudinous provisions, adopts the remedy selected by the 2005 ROD (the \$451 million cost of which was a component of the public process on the selection of that ROD in 2005), and sets forth stipulated penalties should Honeywell fail to perform the required remediation. In addition to performance of remediation, the Consent Decree requires Honeywell to pay the State's response costs. The Consent Decree will allow remediation to go forward after many years of investigation without delay. The Consent Decree is a cost-effective alternative to litigation that will allow government and Honeywell resources to be spent on remediation, rather than litigation.
	G-2.2	The State has no financial guarantee that Honeywell will complete the process.	Please see the response to Comment R-2.4.

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	G-2.3	<p>"Furthermore, the settlement value of approximately \$451 million seems contrived and conspicuously equals the public investment in the sewer improvement projects. The sewer improvement projects under the Amended Consent Judgement (ACJ) represent the largest public works project in Central New York to date. The same coalition of engineering firms, businesses, and organizations that designed the sewer improvement projects are likely to design and implement the sediment remediation. As with the ACJ, many view the sediment remediation of Onondaga Lake as a "make-work" project. Use of environmental programs and regulation as a tool to provide local economic aid is a cause for concern, and leaves the public impression that environmental compliance and the protection of human health and environment are secondary issues.</p> <p>A critical examination of business interests and relationships among local governments, institutions, engineering firms, consultants, and Honeywell might lead on to theorize that the State and local governments were complicit with, and for the benefit of, Honeywell when signing the ACJ in order to delay and/or avoid diversion of the Metro effluent to the Seneca River. Nutrient loading promotes algal biomass in the hyper-eutrophic epilimnion of Onondaga Lake, which in turn depletes oxygen in the hypolimnion upon microbial decomposition. In effect, Onondaga Lake becomes shallow to</p>	See the response to Comment G-2.1, above.

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	G-2.3 (cont.)	macro-invertebrates and fish, as hypoxia confines most life forms to the upper waters and precludes establishment, and therefore contact with contaminated sediments in the deep waters of the profundal zone. Hence, failure to adequately address in a timely manner the nutrient loading problems in Onondaga Lake has afforded the parties responsible for chemical contamination time to defer cleanup costs. The plan put forth under the ROD, and agreed to in this Consent Decree, does more of the same."	