

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

In the Matter of the Violations of Article 17 of the Environmental Conservation Law and Part 750, *et seq.*, of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York:

-by-

The City of New York and
The New York City Department of Environmental Protection,

Respondents.

**ORDER ON
CONSENT**
(CSO Order
Modification to
CO2-20000107-8)

DEC Case No.
CO2-20140314-01
(IEMs)

WHEREAS:

1. The Department of Environmental Conservation ("the Department") is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State, pursuant to the Environmental Conservation Law ("ECL"), Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), and Orders issued thereunder;
2. The Department has jurisdiction over the abatement and prevention of pollution to the waters of the State pursuant to Article 17 of the ECL and 6 NYCRR Part 750, *et seq.* This jurisdiction also authorizes the Department, as a State agency with an approved program per Sections 318, 402 and 405 of the federal Clean Water Act ("CWA"), 33 U.S.C. Section 1251, *et seq.*, to regulate the discharge of pollutants from point sources into waters of the State in conformity with the CWA;
3. Pursuant to its authority to protect the waters of the State, the Department administers the State Pollutant Discharge Elimination System ("SPDES") permit program, ECL §17-0801, *et seq.* In general, the SPDES program prohibits any discharge of pollutants to the waters of the State without a permit establishing pollutant limitations and treatment requirements. Thus, SPDES permits set certain effluent limitation parameters, determined according to ECL §17-0809 and 6 NYCRR Part 750-1.11, in order to avoid contravention of mandated water pollution control requirements and water quality standards ("WQS"). Those conditions address not only the allowable range of parameters for discharge of pollutants to waters of the State, but also the manner in which the permittee is to operate, maintain, monitor and report on its regulated facilities and activities;

4. The City of New York and New York City Department of Environmental Protection (collectively referred to herein as “Respondents”) own, operate and are responsible for the Respondents’ 14 Wastewater Treatment Plants (collectively referred to as the “WWTPs”). Collectively, these WWTPs process approximately 1.4 billion gallons of sewage per day generated within New York City;

5. Combined sewer overflows (“CSOs”) are discharges of untreated domestic sewage from combined sewer systems, and industrial wastewaters, combined with stormwater. CSOs occur when wet weather flows are in excess of the capacity of combined sewer systems and/or the WWTPs they serve. CSO discharges can contribute to violations of State WQS. CSO outfalls are “point sources” subject to SPDES permit requirements, including both water quality-based and technology-based requirements of the CWA;

6. Previously, the Department and Respondents entered into an Order on Consent on June 26, 1992, which was modified on September 19, 1996 (Case No. R2-3351-90-12) to address CSO discharges. Subsequently, the Department and Respondents entered into an Order on Consent on January 14, 2005 (Case No. CO2-2000-0107-8) (hereinafter referred to as the “2005 CSO Order”) which replaced in their entirety the 1992 and 1996 Orders, to address CSO discharges. The 2005 CSO Order was modified by the 2008 CSO Order Modification (DEC Case No: CO2-20070101-1), the 2009 CSO Order Modification (DEC Case No: CO2-20090318-30), the 2012 CSO Order Modification (DEC Case No: CO2- 20110512-25), and the 2015 CSO Order Modification-26th Ward and Wards Island (DEC Case No: CO2-20140314-01). All of these Orders are collectively described as the “2005 CSO Order and Modifications” in this 2016 IEM Modification to the 2005 CSO Order and Modifications;

7. Respondents are continuing to perform work pursuant to the 2005 CSO Order and Modifications, and pursuant to the 2005 CSO Order and Modifications are required to retain an Independent Environmental Monitor (“IEM”) to provide monitoring services for the construction to be conducted pursuant to such Orders. The monitoring services shall be performed by a minimum of one and a maximum of four full time individuals employed by the IEM for each year the 2005 CSO Order and Modifications are in effect;

8. Respondents have entered into a contract with an IEM (the “2016 IEM Contract”) that commenced May 16, 2016 for the continued performance of monitoring services required under the 2005 CSO Order and Modifications;

9. The IEM funded by Respondents pursuant to the 2005 CSO Order and Modifications is allowed to provide monitoring services for all matters arising from the First Amended Nitrogen Consent Judgment executed by the Department and Respondents and docketed in the Supreme Court of the State of New York, County of New York with Index No. 04-402174. (“BNR Order”). Any IEM services are in addition to the on-site Environmental Monitor (“OEM”) who is a DEC employee and is funded by Respondents pursuant to Section XV of the BNR Order. Any IEM services must be

provided in accordance with Section XV of the BNR Order and the Annual Nitrogen OEM Work Plan provided by DEC to Respondents by February 1st of every year;

10. Respondents are required to retain monitoring services through the existing IEM contract required by the 2005 CSO Order and Modifications to provide independent environmental monitoring services for construction projects pursuant to Appendix B of a 2016 Omnibus Order on Consent between the Department and Respondents identified as DEC Index No. CO2-20150727-439 ("Omnibus Order"). Pursuant to Section V of the Omnibus Order, the monitoring services shall be performed by up to one full-time individual employed by the IEM for each year the Omnibus Order is in effect;

11. On August 1, 2015, the Department issued an individual Municipal Separate Stormwater System SPDES Permit to the Respondents identified as DEC Permit No. 0287890 ("MS4 Permit"). Respondents have agreed to allow up to one environmental monitor for a duration of 5 years, half time for years 1,2 and 5 to perform certain tasks to assist the Department in monitoring Respondents' work under that permit; and

12. The parties have agreed to modify the 2005 CSO Order and Modifications to provide that the minimum of one and maximum of four full-time IEM individuals retained by Respondents pursuant to the 2005 CSO Order and Modifications may also provide monitoring services for the projects which Respondents shall complete under the BNR Order, Omnibus Order, and MS4 Permit.

IT IS HEREBY ORDERED:

I. EFFECT ON PREVIOUS ORDERS

Respondents are bound by, and agree to follow and comply with the terms, provisions and requirements set forth in this Order, including the modified Article VIII.A set forth below in Article II. This Order modifies and replaces only those portions of the 2005 CSO Order and Modifications as set forth in Article II below. All other provisions of the 2005 CSO Order and Modifications shall remain in full force and effect. The requirements set forth below are additional to, and do not affect any requirements set forth in any other Orders on Consent between the Department and Respondents.

II. ENVIRONMENTAL MONITOR REQUIRED

VIII.A. Independent Environmental Monitors Required

1. Respondents were required, at their own expense, to retain an Independent Environmental Monitor ("IEM") to provide independent environmental monitoring services with a minimum of one and maximum of four environmental monitors for implementation of the 2005 CSO Order and Modifications.

2. The Respondents have established an IEM Contract pursuant to which two IEM staff are currently employed. The 2016 IEM Contract commenced May 16, 2016, and shall continue for a term of ten years.

3. In addition to the monitoring services performed by the IEM under the 2016 IEM Contract pursuant to the 2005 CSO Order and Modifications, the IEM is allowed to provide monitoring services, in accordance with the Scope of Services appended to the IEM Contract, for the implementation of the BNR Order; implementation of Appendix B of the Omnibus Order; and activities undertaken by Respondents which are required by the MS4 permit for a period of five years commencing six months after the effective date of the permit. If necessary to insure the uninterrupted funding for the IEM one hundred twenty (120) days prior to the expiration of the 2016 IEM Contract, the Respondents shall, at their own expense, issue a time extension to the 2016 IEM Contract.

III. EFFECTIVE DATE

The effective date of this Order modification shall be the date it is executed by the Department's Commissioner or his designee.

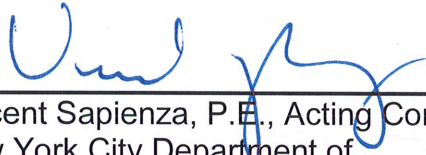
DATED: May 19, 2017
Albany, New York

Basil Seggos, Commissioner
New York State Department of
Environmental Conservation

By: James M. Tierney
James M. Tierney
Deputy Commissioner

CONSENT BY RESPONDENTS

The New York City Department of Environmental Protection hereby consents to the issuance and entry of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.



Vincent Sapienza, P.E., Acting Commissioner
New York City Department of
Environmental Protection

3/3/17

Date

ACKNOWLEDGMENT

State of New York)
County of Queens) ss.:

On the 3rd day of March, 2017 before me personally came Vincent Sapienza to me known, who being by me duly sworn did depose and say that s/he was duly authorized to execute the foregoing instrument and did so on behalf of the Respondents of New York.



Notary Public

PETER AARON SCHIKLER
Notary Public, State of New York
No. 02SC620347
Qualified in Kings County
Commission Expires March 10, 2018

MELINDA SHERER
Notary Public, State of New York
No. 02SH6167388
Qualified in Queens County
Commission Expires May 29, 2019

CONSENT BY RESPONDENTS

The New York City Corporation Counsel hereby consents to the issuance and entry of the foregoing Order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions hereof.

Corporation Counsel of the
City of New York

By: *Carrie Notelson*
Title: ASSISTANT CORPORATION COUNSEL

3/20/2017

Date

ACKNOWLEDGMENT

State of New York)
County of) s.:

On this 20th day of March, 2017, before me personally came Carrie Notelson, to me known, who being duly sworn, deposed and stated that s/he maintains an office at 100 Church Street, New York, New York, that s/he is an Assistant Corporation Counsel, Environmental Law Section of the New York City Corporation Counsel, and that s/he was authorized by said Department to execute the foregoing instrument.

Peter A. Schikler
Notary Public

PETER AARON SCHIKLER
Notary Public, State of New York
No. 02SC6298341
Qualified in Kings County
Commission Expires March 10, 2018