

**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.  
CO 2-20210608-136  
(Flushing Bay  
Tunnel)**

**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 there under.

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. 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 Water Pollution Control Plants 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.

5. The New York City Department of Environmental Protection (“DEP”), a municipal agency, and the City of New York (“the City”) (collectively referred to herein as “Respondents”) own, operate and are responsible for the Respondent’s 14 Wastewater Resource Recovery Facilities (collectively referred to as the “WRRFs”). Collectively, these WRRFs process approximately 1.3 billion gallons of sewage per day generated within New York City.

6. Previously, the Department and Respondents entered into Orders on Consent to address CSO discharges dated June 26, 1992 (Case No. R2-3351-90-12), September 19, 1996 (Case No. R2-3351-90-12), January 14, 2005 (Case No. CO2-20000107-8) (the “2005 CSO Order”), April 14, 2008 (Case No. CO2-2007-0101-1), September 3, 2009 (Case No. CO2-20090318-30), March 8, 2012 (Case No. CO2-20110512-25) (the “2012 CSO Order”), March 26, 2015 (Case No. CO2-20140314-01) (the “2015 CSO Order”), May 19, 2017 (CO2-20140314-01), December 7, 2017 (CO2-20161013-375), and May 25, 2021 (CO2-20190107-5), all of which are hereinafter referred to collectively as the “CSO Orders”.

7. Respondents submitted the Flushing Bay CSO Long-Term Control Plan (“LTCP”) on December 30, 2016, in accordance with the 2012 CSO Order, as modified by Department’s letters dated February 23, 2015 and May 17, 2016. The selected alternative for the LTCP was a 25 million-gallon CSO storage tunnel (“CSO Storage Tunnel”) that is projected to reduce CSOs discharges to Flushing Bay from two major outfalls by about 50 percent for the design rainfall year of 2008. The probable bid cost was \$829 million in calendar year 2016 dollars. The LTCP was approved by the Department on March 7, 2017 as clarified by the Department on May 9, 2017 and the following milestones were incorporated into the CSO Order.

<b>Flushing Bay 25 MG CSO Storage Tunnel (1)</b>	
Initiate Final Design	July 2021
Design Completion	June 2025
Notice to Proceed to Construction	July 2026
Construction Completion	June 2035

(1) Milestones dates may be subject to revision by the Department based on additional facility planning.

8. Respondents timely submitted a Notice of Force Majeure pursuant to Article VI of the 2005 CSO Order on March 19, 2020 claiming that the COVID-19 pandemic had the potential to impact the completion of all open milestones and projects under the CSO Orders. The Department acknowledged in a letter dated March 26, 2020 that the COVID-19 pandemic had the potential to impact CSO Orders milestones and projects but it would review each potential impact and request for modification to the milestones on a case-by-case basis.

9. Respondents submitted a separate Notice of Force Majeure pursuant to Article VI of the 2005 CSO Order on September 16, 2020 claiming that the COVID-19 pandemic was impacting its ability to start the design for the CSO Storage Tunnel by July 2021, as required under the CSO Orders. Specifically, Respondents claimed that due to a contracting backlog of capital projects in fiscal year 2020, a potential reduction in revenue, and a reprioritization of funding for non-mandated critical infrastructure projects over mandated infrastructure projects, Respondents must defer funding for the design contract for the CSO Storage Tunnel. Respondents requested that the Department exercise enforcement discretion on the CSO Storage Tunnel milestones for a minimum of 12 months or until such time as the full extent of the delay could be identified.

10. The Department and Respondents conducted numerous discussions in 2020 and 2021 related to the Force Majeure in order to confirm the validity of the claims. Based on these discussions, the Department concluded that the limited capacity of Respondents to award contracts was the most relevant COVID-19 pandemic-related factor impacting the design start of the CSO Storage Tunnel. The Department determined that a 6-month extension to the design start milestone from July 31, 2021 to January 31, 2022, was warranted. The 6-month extension for the CSO Storage Tunnel design start milestone was formally approved by the Department on April 26, 2021.

11. Pursuant to Article VII of the 2005 CSO Order, Respondents initiated the dispute resolution process on June 10, 2021 challenging the sufficiency and basis of the 6-month extension for the CSO Storage Tunnel design start milestone approved by the Department and requested informal negotiations. To resolve this dispute, Respondents and the Department conducted numerous discussions and Respondents submitted a Modification Request pursuant to Article XIII of the 2005 CSO Order on December 10, 2021. The Department and Respondents have each consented to the making of this Order, which modifies the CSO Orders, without further action, litigation, hearing, or adjudication of any issues of law or fact, being duly advised, and it being in the public interest and advantageous to the State.

**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 milestone dates in revised Appendix A and new Appendix C, and the requirements as set forth below in Article II. This Order modifies and replaces only those portions of the CSO Orders as set forth in Article II below and revised Appendix A and new Appendix C. All other provisions of the CSO Orders shall remain in full force and effect. The requirements set forth in this Order are additional to, and do not affect any requirements set forth in any other Orders on Consent between the Department and Respondents.

**II. COMPLIANCE SCHEDULE**

**A. Flushing Bay CSO Storage Tunnel.** Respondents are permanently enjoined and directed to complete the tasks and meet the milestones set forth in revised Appendix A for the Flushing Bay CSO Storage Tunnel, which are incorporated herein and attached hereto. The implementation and enforcement of the activities required by these milestones shall be governed by the terms of the 2005 Order. The design start milestone for the CSO Tunnel shall be extended as set forth in revised Appendix A. In conjunction with this milestone extension, Respondents shall complete the requirements listed below and milestones established for each requirement shall be subject to stipulated penalties pursuant to Article V.C of the 2005 CSO Order.

1. Initiate and certify a preliminary phase of design for CSO Tunnel no later than July 31, 2022, or sooner if possible. Preliminary phase of design shall include, at a minimum, site and survey work to support tunnel and shaft sites.

2. Submit an approvable<sup>1</sup> engineering report for the CSO Tunnel, no later than December 31, 2023, that includes an assessment of necessary property acquisition needs, review of geotechnical investigations, project layout schematics, including potential locations of dewatering pump station and tunnel alignment, and a schedule for completion of the preliminary design phase initiated pursuant Article II.A.1. above and a schedule for completion of the final phase of design and construction of the CSO Tunnel.

3. Complete and submit the Rikers Island Feasibility Study by December 31, 2023.

4. Develop and submit, no later than December 31, 2023, a process or decision matrix to link completion of Rikers Island Feasibility Study to making a final decision on use of Rikers Island for construction of a new WRRF. The City shall make a final decision on the use of Rikers Island for construction of a new WRRF no later than December 31, 2024.

5. If a decision on Rikers Island is not achieved per Article II.A.4 above, then Respondents shall proceed with implementation of CSO Tunnel in accordance with the 2005 CSO Order and Appendix A.

**B. State of Good Repair Projects.** Respondents are permanently enjoined and directed to complete the tasks and meet the milestones set forth in new Appendix C of this Order for State of Good Repair Projects, which are incorporated herein and attached hereto. Respondents shall issue Notices to Proceed to Construction for all State of Good Repair projects set forth in Appendix C no later than December 2032. The milestones set forth in Appendix C shall be subject to stipulated penalties pursuant to Article V.C of the 2005 CSO Order and implementation and enforcement of the activities required by these milestones shall be governed

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<sup>1</sup> The definition of "approvable" shall be the same as specified in NYCRR Section 750-1.2(8).

by the terms of the 2005 CSO Order. Respondents may seek modification to Appendix C in accordance with Article XIII.

**C. Newtown Creek CSO Storage Tunnel.** Respondents are permanently enjoined and directed to complete the tasks and meet the milestones set forth in revised Appendix A for the Newtown Creek CSO Storage Tunnel, which are incorporated herein and attached hereto. The implementation and enforcement of the activities required by these milestones shall be governed by the terms of the 2005 CSO Order.

**D.** Upon the effective date of this Order modification, Appendix A of the 2012 CSO Orders shall be modified by the pages set forth in the revised Appendix A of this Order and the pages of revised Appendix A shall be substituted for the corresponding pages of Appendix A of the 2012 CSO Orders as appropriate. In addition, Appendix C shall be added in its entirety to the CSO Orders.

**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: Sept. 2, 2022  
Albany, New York

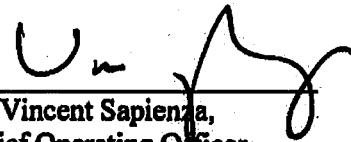
**Basil Seggos, Commissioner  
New York State Department of  
Environmental Conservation**

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.

**Rohit Aggarwala, Commissioner  
New York City Department of  
Environmental Protection**


By:   
Vincent Sapienza,  
Chief Operating Officer

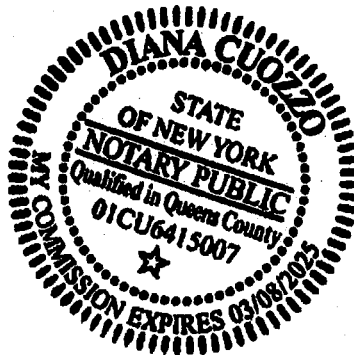
7/28/2022  
Date

**ACKNOWLEDGMENT**

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

On the 28<sup>th</sup> day of July, 2022 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



**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.

Hon. Sylvia O. Hinds-Radix  
Corporation Counsel of the  
City of New York

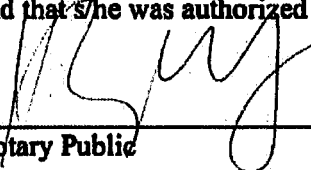
By:   
Title: ASSISTANT CORPORATION COUNSEL

7/29/22  
Date

**ACKNOWLEDGMENT**

State of New York )  
County of New York )s.:

On this 29<sup>th</sup> day of July, 2022, before me personally came Devon Goodrich, 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.

  
Notary Public

HILARY MELTZER  
Notary Public, State of New York  
No. 02ME5010465  
Qualified in New York County  
Commission Expires ~~June 5, 20~~  
March 29, 2023



**APPENDIX A**  
**DEC Case No. CO2-20110512-25**

<b>V. Flushing Bay CSO</b>	<b>Milestone Date</b>	<b>Revised Milestone Dates</b>
A. Tallman Island WWTP and associated sewer system are capable of delivering, accepting and treating influent at or above twice the WWTP's design flow during any storm event		
6. Initiate Final Design - Flushing Interceptor	TBD	
7. Final Design Completion Including CPM Analysis - Flushing Interceptor	TBD	
8. Notice to Proceed to Construction - Flushing Interceptor	TBD	
9. Construction Completion - Flushing Interceptor	TBD	
F. TI-010 Disinfection at Flushing Creek CSO Retention Tank and Diversion Chamber 5 and TI-011 Outfall Disinfection, Floatables Control at TI-R09 and Diversion Chamber 3.		
1. Initiate Final Design	March 1, 2019	
2. Design Completion	September 2022*	
3. Notice to Proceed to Construction	September 2023*	
4. Construction Completion	December 2025*	
G. Flushing Bay 25 MG CSO Storage Tunnel		
1. Initiate Design	January 31, 2022	July 31, 2022
2. Submit Approvable Engineering Design Report		December 31, 2023
3. Submit Rikers Island Feasibility Study		December 31, 2023
4. Submit Decision Matrix for Use of Rikers Island for Construction of New WRRF		December 31, 2023
5. Provide Final Decision For Use of Rikers Island for Construction of New WRRF		December 31, 2024
6. Design Completion	June 2025**	
7. Notice to Proceed to Construction	July 2026**	
8. Construction Completion	June 2035**	

\* Milestone dates may be subject to revision by the Department based on additional facility planning

\*\* Milestone dates may be subject to revision by the Department upon its approval of the Engineering Design Report (Item V.G.2)

**APPENDIX A  
DEC Case No. CO2-20110512-25**

**VIII. Newtown Creek CSO**

**Milestone Date**

**Revised Milestone Dates**

**B. Enhanced Aeration in Dutch Kills and Lower Newtown Creek**

1. Initiate Final Design

June 2010 (complete)

2. Design Completion

June 2015 (complete)

3. Notice to Proceed to Construction

Deleted

4. Construction Completion

Deleted

**E. Borden Avenue Pump Station Expansion**

1. Initiate Final Design

July 2021

2. Final Design Completion Including CPM Analysis

December 2024\*

3. Notice to Proceed to Construction

September 2025\*

4. Construction Completion

September 2029\*

**F. 62.5% CSO Storage Tunnel**

1. Initiate Final Design

June 2025

2. Final Design Completion Including CPM Analysis

May 2028

3. Notice to Proceed to Construction

August 2030

4. Construction Completion

June 2042

August 2022

December 2028\*

December 2029\*

December 2040\*

\* Milestone dates may be subject to revision by the Department based on additional facility planning

**APPENDIX C**  
**DEC Case No. CO2-20110512-25**

<b>I. State of Good Repair Projects</b>	<b>Milestone Date</b>
A. Reconstruction of Primary Settling Tanks at Bowery Bay WRRF	
1. Submit Approvable Basis of Design Report	December 2022
2. Design Completion	TBD
3. Notice to Proceed to Construction	TBD
4. Construction Completion	TBD
B. Replacement of Existing Emergency Generators at Bowery Bay WRRF	
1. Submit Approvable Basis of Design Report	December 2026
2. Design Completion	TBD
3. Notice to Proceed to Construction	TBD
4. Construction Completion	TBD
C. Replacement of Digesters at Hunts Point WRRF	
1. Submit Approvable Basis of Design Report	December 2022
2. Design Completion	TBD
3. Notice to Proceed to Construction	TBD
4. Construction Completion	TBD
D. Reconstruction of Sludge Handling Equipment at Hunts Point WRRF	
1. Submit Approvable Basis of Design Report	December 2025
2. Design Completion	TBD
3. Notice to Proceed to Construction	TBD
4. Construction Completion	TBD
E. Reconstruction of Primary Settling Tanks at North River WRRF	
1. Submit Approvable Basis of Design Report	December 2023
2. Design Completion	TBD
3. Notice to Proceed to Construction	TBD
4. Construction Completion	TBD
F. Rehabilitation of North River WRRF Influent and Effluent Gates and Bar Screens	
1. Submit Approvable Basis of Design Report	December 2027
2. Design Completion	TBD
3. Notice to Proceed to Construction	TBD
4. Construction Completion	TBD