

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)
)
 and)
)
 THE STATE OF NEW YORK,)
)
 Plaintiffs,)
)
 v.)
)
 THE CITY OF OSWEGO, NEW YORK,)
 A Municipal Corporation,)
)
 Defendant.)
 _____)

Civil Action No.

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and Plaintiff State of New York (“State”) (collectively, the “Plaintiffs”), filed a complaint in this action (“Complaint”) concurrently with this Consent Decree, alleging that Defendant, the City of Oswego, New York (“City”), violated and is violating Section 301(a) of the Clean Water Act (“Act”), 33 U.S.C. § 1311(a), in connection with unpermitted discharges from the west side of the City’s publicly owned treatment works.

The City, which has a population of approximately 18,000, owns and operates a “publicly owned treatment works” (“POTW”), as defined at 40 C.F.R. § 403.3, part of which is located on the east side of the Oswego River (“East Side System”), and the remainder of which is located on the west side of the River (“West Side System”). The East Side System serves approximately 8,700 people, including citizens of Oswego’s east side and certain surrounding communities. The West Side System services approximately 10,000 people, including citizens of Oswego’s west side and certain surrounding communities. On April 14, 2004, the City and the New York State Department of Environmental Conservation entered into an Administrative Consent Order (No. R7-20040316-16) resolving claims that the City violated Section 17-0803 of the New York Environmental Conservation Law, and Section 751.1 of Title 6 of the New York Code of Rules and Regulations at the East Side System (“East Side Order”). The East Side Order was modified on February 27, 2006. Pursuant to the modified East Side Order, the City paid a civil penalty of \$10,000 for past violations of the Act in the East Side System and implemented corrective measures in that system, at a cost estimated by the City of approximately \$16,100,000. The above-captioned action addresses violations in the West Side System only.

The Complaint in this action seeks injunctive relief and civil penalties, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§1319(b) and (d), for the discharge of pollutants into navigable waters of the United States from the City's West Side System, in violation of Section 301(a) of the Act, 33 U.S.C. §1311(a). The State has been joined as a party to this action pursuant to Section 309(e) of the Act, 33 U.S.C. §1319(e). In addition, the City has violated and is violating several provisions of the New York State Environmental Conservation Law ("ECL"), including sections 17-0701 and 17-0803, due to the unpermitted discharges from the West Side System.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and 505(a) of the Act, 33 U.S.C. §§ 1319(b) and 1365(a), and over the Parties. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over the state law claims asserted by the State. Venue lies in this judicial district pursuant to Sections 309(b) and 505(c) of the Act, 33 U.S.C. §§ 1319(b), 1365(c), and 28 U.S.C. §§ 1391(b), 1395(a), because the City is located in this judicial district and because the causes of action alleged in the Complaint are alleged to have occurred in this judicial district. For

purposes of this Decree, or any action to enforce this Decree, the City consents to the Court's jurisdiction over this Decree or such action, and over the City, and consents to venue in this judicial district.

2. For purposes of this Decree, the City agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), the New York State Environmental Conservation Law, Article 17, and accompanying regulations set forth at 6 NYCRR Part 750.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the Plaintiffs, and upon the City and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the West Side System, or any portion thereof, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of the Decree are implemented. At least 30 days prior to any such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA, the United States Department of Justice, and the State, in accordance with Section XV (Notices). Any attempt to transfer ownership or operation of the West Side System, or any portion thereof, without complying with this Paragraph constitutes a violation of this Decree.

5. The City shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. The City

shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, the City shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

7. All plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Consent Decree, or resulting from the activities required by this Decree, shall have the objective of ensuring that the City achieves and maintains for the term of this Decree full compliance with the Act, and its objectives, the State water pollution control laws, all applicable federal and state regulations, and the terms and conditions of the City's State Pollutant Discharge Elimination System Permit No. NY-0029106 (the "SPDES Permit") for the West Side System, including, without limitation, elimination of all Sanitary Sewer Overflows ("SSOs") and elimination or control of all Combined Sewer Overflows ("CSOs") in accordance with EPA's CSO Policy.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "City" shall mean the City of Oswego, New York, the Defendant in the above-captioned action. Unless otherwise specified, reference to locations in this Decree are to locations within the City on the west side of the Oswego River.

b. "Combined Sewer Overflow" or "CSO" shall mean an overflow, spill, or release of wastewater from the Combined Sewer System ("CSS") within the City's West Side System.

This term shall include:

i. discharges to waters of the State or United States from the CSS; and
ii. any release of wastewater from the CSS to public or private property (including backups into public or private buildings or other private property) that does not reach waters of the United States or the State.

c. "Combined Sewer System" or "CSS" shall mean that portion of the City's wastewater collection and transmission system ("WCTS") which is designed to collect and transmit municipal sewage (including domestic, commercial and industrial wastewaters), combined with stormwater. The City's CSS is separate and distinct from its Sanitary Sewer System, or SSS, defined below.

d. "Complaint" shall mean the complaint filed jointly by the United States and the State in the above-captioned action.

e. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices hereto (listed in Section XXIV), including any amendments thereto.

f. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Decree, where the last day would fall on a Saturday,

Sunday, or federal holiday, the period shall run until the close of business on the next working day.

- g. "DEC" shall mean the New York State Department of Environmental Conservation and any of its successor departments or agencies.
- h. "Effective Date" shall have the definition provided in Section XVI.
- i. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- j. "EFMF" shall mean the West Side System's Excess Flow Management Facility and its components, including the "Swirl Concentrator," located near the intersection of West First Street and West Schuyler Street.
- k. "Excessive I/I" shall mean "excessive infiltration / inflow" as that term is used in 40 C.F.R. § 35.2120.
- l. "Force Main" shall mean a pipe that receives wastewater from the discharge side of a pump and conveys the wastewater under pressure.
- m. "Gravity Sewer Line" shall mean a pipe that receives and contains wastewater and conveys the wastewater normally not under pressure or with any assistance other than the influence of gravity.
- n. "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 40 C.F.R. § 35.2005(b)(20).

o. "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, storm water, surface runoff, street wash waters, or drainage, as provided in 40 C.F.R. § 35.2005(b)(21).

p. "Interest" shall mean interest at the rate specified in 28 U.S.C. § 1961. Unless otherwise stated, the applicable rate of interest shall be the rate in effect at the time the interest accrues.

q. "I/T" shall mean the total quantity of water from Infiltration and Inflow without distinguishing the source.

r. "LTCP" shall mean a Long-Term Control Plan within the meaning of EPA's "Combined Sewer Overflow Control Policy," 59 Fed. Reg. 18688, April 19, 1994 ("CSO Policy").

s. "Oswego River" shall mean the river flowing from the confluence of the Oneida River and the Seneca River, through the City of Oswego, into Lake Ontario.

t. "Oswego River Interceptor" or "ORI" shall mean a series of pipes, extending 5,600 feet along the western bank of the Oswego River, from West First Street at Ellen Street to the EFMF. The interceptor was constructed in the early 1980s to intercept sewage and stormwater flowing over and through the CSS before they discharge to the Oswego River. Flows through the interceptor travel northerly, through 18-inch pipes at the southern, Ellen Street end of the interceptor, through two 36-inch pipes for approximately 1,700 feet beneath the City's west

side river walk park, through one 54-inch pipe, and into the EFMF. The interceptor captures and transports all regular (non-overflowing) CSS flows to the EFMF.

u. "Outfall No. 002" shall mean the outfall from the EFMF, as described more particularly in the City's SPDES Permit.

v. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral, unless specified otherwise.

w. "Parties" shall mean the United States, the State, and the City.

x. "Plaintiffs" shall mean the United States and the State.

y. "Prohibited CSO" shall mean a CSO that has not been authorized pursuant to the City's SPDES Permit.

z. "Pump Station" shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that pump station.

aa. "Sanitary Sewer Overflow" or "SSO" shall mean an overflow, spill, or release of wastewater from or caused by the Sanitary Sewer System ("SSS") within the City's West Side System. This term shall include:

i. discharges to waters of the State or United States from the SSS; and

ii. any release of wastewater from the SSS to public or private property (including backups into public or private buildings or other private property) that does not reach waters of the United States or the State.

bb. "Sanitary Sewer System" or "SSS" shall mean all portions of the City's WCTS that are not part of its Combined Sewer System, or CSS, defined above.

