

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

In the Matter of Violations of Article 17 of the
Environmental Conservation Law ("ECL"), Title 6
Part 750 of the New York Code of Rules and Regulations,
and SPDES Permits

**ORDER ON
CONSENT**

BY:

Rensselaer County Sewer District, Permittee
Water Street, Troy, NY 12180
SPDES Permit No. NY-0087971

INDEX #'s
CO 4-20091123-154
DM# 365635

-and-

City of Troy, Department of Public Utilities, Permittee
25 Water Plant Road, Troy, NY 12182
SPDES Permit No. NY-0099309

-and-

City of Rensselaer, Permittee
62 Washington Street, Rensselaer, NY 12144
SPDES Permit No. NY-0026026,

RESPONDENTS

1. The New York State Department of Environmental Conservation ("DEC" or "Department") is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, *inter alia*, article 3 section 0301 of the Environmental Conservation Law ("ECL").

2. DEC has jurisdiction over the enforcement of article 17 of the ECL, and the issuance of State Pollutant Discharge Elimination System Permits ("SPDES permits") pursuant to articles 3 and 17 of the ECL and the regulations promulgated there under at title 6 part 750, *et seq.*, of the Official Compilation of Codes Rules and Regulations of the State of New York ("NYCRR").

3. This Order on Consent (or "Order") is entered into pursuant to the Department's authority under the following ECL provisions and regulations:

a. Articles 3 and 17 of the ECL and part 750, *et seq.*, of 6 NYCRR require any person discharging a pollutant to the waters of New York State to have a SPDES permit from the Department.

b. ECL §17-0105(17) and 6 NYCRR Subpart 750-1.2(a)(66) define sewage as a “pollutant” when discharged into water.

c. ECL §17-0105(4) and 6 NYCRR Subpart 750-1.2(a)(77) define “sewage” to mean the water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present. The admixture with sewage of industrial wastes or other wastes is also to be considered sewage.

d. ECL §17-0105(10) defines “disposal system” to mean a system for disposing of sewage, industrial waste or other wastes, and including sewer systems and treatment works.

e. The Hudson River is a water of the State of New York, as defined at ECL §17-0105(2), and 6 NYCRR Subpart 750-1.2(97).

f. The Hudson River in the general vicinity of the Cities of Troy and Rensselaer has a water classification of Class “C” as defined at 6 NYCRR Subparts 701.8, 858.3 and 858.4.

g. Pursuant to ECL §17-0803 and 6 NYCRR Subpart 750-1.4(a) it shall be unlawful to discharge pollutants to the waters of the State without a SPDES permit having been issued to such person with respect to such discharge, or to discharge pollutants with a SPDES permit having been issued for such discharge but in a manner other than as prescribed by the terms of the SPDES Permit;

h. Pursuant to ECL § 17-0505, the operation of a disposal system is prohibited without a SPDES permit to do so;

i. Pursuant to ECL §17-0701, it is unlawful for any person to use any outlet or point source for the discharge of sewage into the waters of the State until a SPDES permit so authorizing the discharge has been granted;

j. Pursuant to ECL § 17-0511, the use of existing outlets or point sources which discharge sewage is prohibited unless use is in compliance with all standards, criteria, limitations, rules and regulations;

k. Pursuant to 6 NYCRR Subpart 750-1.16(a), any permittee who intends to continue to discharge beyond the period of time covered in the applicable SPDES permit must file for renewal of the permit at least 180 days prior to its expiration.

l. Pursuant to 6 NYCRR Subpart 750-2.8(a)(2), a permittee shall, at all times, properly operate and maintain all disposal facilities, which are installed or used by the permittee to achieve compliance with the conditions of the permit;

m. Pursuant to 6 NYCRR Subpart 750-2.8(b)(2), bypass is prohibited, and the department may take enforcement action against a permittee for bypass;

n. Pursuant to 6 NYCRR Subpart 750-2.7(c), a SPDES permittee shall report within 24 hours of awareness of a discharge of untreated sewage that would otherwise be treated, or a bypass or other incident similar in severity and consequences;

o. Pursuant to 6 NYCRR Subpart 750-2.9(a)(4), all SPDES permittees who are publicly owned treatment works (POTWs) shall enact, maintain and enforce or cause to be enacted, maintained and enforced up-to-date and effective sewer use laws in all parts of the POTW service area. Such enactment and enforcement shall include inter-municipal agreements and/or other enforceable legal instruments that allow the permittee to control discharges, either directly or through jurisdictions contributing flows to the POTW, flow and loads to the POTW as well as discharges to the POTW; and

p. Pursuant to ECL §71-1929, any person violating Article 17, titles 1-11, or the regulations promulgated there under, or any permit issued thereto, is subject to a civil penalty not to exceed thirty-seven thousand five-hundred dollars (\$37,500) per day, for each violation, as well as injunctive relief.

Respondent, Rensselaer County Sewer District

4. RCSD's SPDES permit:

a. Respondent, Rensselaer County Sewer District ("RCSD"), is a "person" as defined in ECL § 17-0105.1 and in 6 NYCRR Subpart 750-1.2(64), and has offices located at the foot of Water Street, Troy, NY 12180.

b. Respondent RCSD owns and/or has responsibility for the Rensselaer County Sewer District No. 1 Waste Water Treatment Plant ("WWTP"), a POTW located on Water Street in Troy.

c. Respondent RCSD is responsible for the operation and maintenance of the WWTP, including its appurtenant disposal facilities located in the Cities of Rensselaer and Troy.

d. Respondent RCSD's SPDES permit became effective no later than April 1, 1976, and was, *inter alia*, renewed in February 2001 and modified effective December 1, 2009. The terms and conditions of Respondent RCSD's SPDES Permit of February 2001, along with valid modifications thereto, remained in effect, as required by 6 NYCRR 621.13(e), until December 1, 2009. Respondent RCSD's SPDES permit was again modified effective March 1, 2010.

e. Respondent RCSD's SPDES permit is identified in the Department's records as SPDES Permit No. NY-0087971; DEC No. 4-3832-00011/00001.

f. Respondent RCSD is authorized to discharge treated sewage from the WWTP to the Hudson River from a single outfall by and in accordance with the terms of its SPDES permit.

g. The Director of RCSD is the responsible official designated by the SPDES permit for submitting required reports to the Department.

5. Respondent RCSD's SPDES permit conditions regarding proper operation and maintenance:

a. From at least February 2001 until December 1, 2009, Respondent RCSD's SPDES permit also included General Condition 11.1(b), which required that Respondent RCSD "*shall at all times properly operate and maintain all facilities and systems of treatment and control (or related appurtenances)*" to achieve compliance with the conditions of the permit.

b. From at least February 2001 until December 1, 2009, Respondent RCSD's SPDES permit included General Condition 12.1(b), which prohibited dry weather overflows and further included Minimum Requirement #1 on Page 14 therein, which required Respondent RCSD to "*ensure that maximum flow is conveyed to the...WWTP during periods of wet weather.*"

c. Similarly, Respondent RCSD's SPDES permit, as modified effective March 1, 2010, includes both of these requirements (j) and (k), above in the Best Management Practices ("BMPs") on Pages 7-8 therein, particularly BMP #1 wherein, among other items, Respondent RCSD must prepare an "*operation, maintenance and inspection program...to minimize the occurrence of dry weather overflows...and insure that the maximum amount of wet weather flow is conveyed to the POTW for treatment.*"

d. At all times relevant to this Consent Order, Respondent RCSD was subject to the provisions of 6 NYCRR Subpart 750, including without limitation, §§ 750-2.8(a)(2), which requires that a permittee shall, at all times, properly operate and maintain all disposal facilities.

6. Respondent RCSD's SPDES permit condition regarding inter-municipal agreements:

From at least February 2001 until December 1, 2009, Respondent RCSD's SPDES permit included General Condition 12.1(d), which required that SPDES permittee shall enact, maintain and enforce a sewer use ordinance. During the same time period, and at all times thereafter, 6 NYCRR Subpart 750-2.9(a)(4) has included the identical language, and states that such enactment and enforcement shall include inter-municipal agreements and/or other enforceable legal instruments that allow the permittee to control its discharges. Respondent RCSD's SPDES permit requires compliance with 6 NYCRR Subpart 750-2, which includes subprovision 750-2.9(a)(4).

7. Respondent RCSD's permitted facilities that control CSO discharges, intercept and convey sewage to the WWTP:

a. The facilities and systems governed by Respondent RCSD's SPDES permit serve, in part, to (i) divert the flows of sewage from the Cities of Troy and Rensselaer into Respondent

RCSD's interceptor line, which then conveys the flow to Respondent RCSD's WWTP, and (ii) prevent river water, as distinct from sewage, from entering Respondent RCSD's disposal facilities and diminishing the available capacity of the disposal system for sewage.

b. Respondent RCSD's disposal facilities include 57 "regulators", each of which includes or is associated with a "diversion dam or weir," and a "diversion channel." Regulators located north of the Troy dam are also associated with "tide gates." These disposal facilities should function together to intercept the flows of sewage from the Cities of Troy and Rensselaer, divert the flows into Respondent RCSD's interceptor line, and convey the flows to Respondent RCSD's WWTP for treatment with the assistance of various "pump stations". The tide gates should prevent river water from entering these permitted facilities during high tides and/or storm events, thereby allowing these disposal facilities to maximize the volume of sewage conveyed to the interceptor line and WWTP for treatment.

c. Respondent RCSD's 57 regulators should divert all incoming sewage (100%) during dry weather conditions as well as some storm water into Respondent RCSD's interceptor line and WWTP for treatment.

d. During wet weather events, storm water and/or snow melt, without limitation, combines with the sanitary sewage, and the combined flow is received by and collected in the sewer pipes of the Cities of Troy and Rensselaer. Respondent RCSD's 57 regulators and associated structures are designed to direct this combined wet weather flow to the interceptor line and WWTP in accordance with its SPDES permit. Combined flow that overtops the Respondent RCSD's diversion dams does not enter the diversion channel to the interceptor and is instead discharged to the Hudson River through the outfalls and outfall pipes of the Cities of Troy and Rensselaer. Such combined wet weather overflow discharges to the Hudson River are called combined sewer overflows ("CSOs"). CSOs are allowed, with certain restrictions, in accordance with the SPDES permits of the Respondent Cities of Troy and Rensselaer, respectively.

e. In general terms, an overflow of sewage during dry or fair weather conditions is a "dry weather overflow" ("DWO"). DWOs were and are prohibited by Respondent RCSD's SPDES permit.

8. Respondent RCSD's SPDES permit conditions for dry weather overflows:

a. Respondent RCSD's SPDES permit prohibits dry weather overflows, and requires any such overflows to be promptly abated and reported to the Department.

b. From at least February 2001 until at least December 1, 2009, Respondent RCSD's SPDES Permit included General Conditions (Part II). General Condition 12.1(b) on page 10 therein provides, in pertinent part, that "[d]ry weather overflows are prohibited. The occurrence of any

dry weather overflow constitutes a bypass exceeding limitations as defined in Section 11.2 of this Part and shall be promptly abated and reported to the Department in accord with Section 5 of this Part.”

c. The General Condition in Section 5(b)(1) on page 3 provides, in pertinent part, “[t]he following shall be included as information which must be reported within 24 hours under paragraph (b) above: *** (v) any dry weather overflow(s).”

d. Respondent RCSD’s SPDES permit, as modified effective March 1, 2010, reflects substantially the same prohibition in the Best Management Practice #6 on Page 8 of 16, which reads, “Dry weather overflows are prohibited. Upon the permittee’s[weekly] inspection, the permittee shall promptly abate any impairment in the operation or function of a regulator, and report the abated action within 24 hours to (1) the Regional Water Engineer in accordance with 6 NYCRR Subpart 750-2.7(c); and (2) the tributary community.”

9. Violations. Blockages in RCSD’s Regulators January 3, 2006 through July 31, 2010; failure to report:

a. From January 3, 2006 through July 26, 2010, Respondent RCSD recorded 398 instances of its regulators being “plugged” during “dry” weather conditions as opposed to during “rain,” “snow” or “snowmelt.”

b. 316 of the 398 instances occurred in the City of Troy.

c. 82 of the 398 instances occurred in the City of Rensselaer.

d. The 398 instances of plugged regulators are in violation of the proper operation and maintenance provisions of the General Conditions 11.1(b) and 12.1(b) or BMP #1 in Respondent RCSD’s SPDES permit, ECL §§ 17-0505 and 17-0803, and 6 NYCRR Part 750-2.8(a)(2) as cited both in the permit and herein.

e. From January 2006 through August 2009, Respondent RCSD recorded 309 instances of blocked regulators during dry weather conditions, but Respondent RCSD reported none of the 309 instances to the Department within 24 hours, resulting in 309 additional violations of Respondent RCSD’s SPDES permit; specifically, General Condition 5(b)(1) and 6 NYCRR Subpart 750-2.7(c), as cited therein. Respondent RCSD also failed to report within 24 hours 32 instances of plugged regulators that occurred between March 1, 2010 and July 31, 2010, in violation of BMP #6 in its SPDES permit, ECL 17-0505, and 6 NYCRR Subpart 750-2.7(c). The total number of violations for failure to report as of July 31, 2010 is 409.

10. Violations. Blockages, Back-ups and High Flows in RCSD’s Regulators August 2010 through August 2011; failure to report:

a. From August 2010 through August 2011, Respondent RCSD recorded 193 instances of “overflows” of its diversion dams occurring in its regulators: 122 due to “plugged” regulators; 22 due to “back-ups” into the regulator from the interceptor during dry weather conditions; and 49 due to “high flow” in the regulators during dry weather conditions.

b. 169 of the 193 events occurred in the City of Troy and 98 of them were instances of “plugged” regulators. 24 of the 193 events occurred in the City of Rensselaer and 24 of them were instances of “plugged” regulators.

c. The 193 overflows are in violation of the proper operation and maintenance provisions of BMP #1 in Respondent RCSD’s SPDES permit, ECL §§ 17-0505 and 17-0803, and 6 NYCRR Part 750-2.8(a)(2) as cited both in the permit and herein.

d. Respondent RCSD failed to report in 24 hours 82 instances of plugged regulators that occurred between July 31, 2010 and August 31, 2011, in violation of BMP #6 in its SPDES permit and 6 NYCRR Subpart 750-2.7(c).

11. Violations. Respondent RCSD - Operation without Inter-Municipal Agreements from 2006-2011:

a. Respondent RCSD operated without inter-municipal agreements or other enforceable legal instruments for the control of sewage discharges with the Respondent City of Troy during the calendar years of 2006 through August 1, 2011 and with the Respondent City of Rensselaer during the calendar years of 2006 and 2007. Respondent RCSD entered into an inter-municipal agreement with Respondent City of Rensselaer that was unenforceable and unenforced in 2008 and 2009.

b. The failure to enter into inter-municipal agreements during the calendar years of 2006 through August 31, 2011 resulted in 2,061 daily violations of General Condition 12.1(d) in Respondent RCSD’s SPDES permit or 6 NYCRR 750-2.9(a)(4) as cited both in the permit and herein.

Respondent City of Troy DPU:

12. Respondent City of Troy DPU; its SPDES permit:

a. The City of Troy is a municipal agency owning, operating and having responsibility for various sewer lines located in the city, including, without limitation, (i) the “collection lines” leading to the 49 RCSD regulators in the City of Troy, (ii) the 49 outfall pipes extending from these regulators to the Hudson River, (iii) the 49 corresponding “outfalls” or discharge points at the Hudson River; and (iv) the public signs that are required to be located at each CSO outfall.

b. The City of Troy is a “person” as defined in ECL § 17-0105.1 and in 6 NYCRR Subpart 750-1.2(64), and has offices located at 1776 Sixth Ave, Troy NY 12180

c. Respondent City of Troy Department of Public Utilities ("Troy DPU") is a "person" as defined in ECL § 17-0105.1 and in 6 NYCRR Subpart 750-1.2(64), and has offices located at 55 Leverage Road, Troy, NY 12182 and at 25 Water Plant Road, Troy, NY 12182.

d. Respondent City of Troy's SPDES permit is identified in the Department's records as SPDES Permit No. NY-0099309; DEC No. 4-3817-00031/00001.

e. Respondent Troy DPU is authorized to use the 49 outfall pipes and associated outfalls solely for the discharge of CSOs to the River in the manner prescribed in its permit.

f. Respondent Troy DPU's SPDES permit became effective no later than November 1, 1985, and was renewed, modified *inter alia* effective October 18, 2005, and scheduled to expire on July 11, 2011 unless renewed by permittee. A renewal notice was timely received, and the permit was extended and continues in effect pending full technical review by the Department.

g. Respondent Troy DPU is responsible for the proper inspection, operation and maintenance of the above-referenced 49 collection lines, outfall pipes and CSO outfalls, and public signs, as required by its SPDES permit, such that only CSOs are discharged from its outfalls and only in the manner prescribed in its permit. The Commissioner of the Troy DPU is the responsible official designated by the SPDES Permit for submitting required reports to the Department.

13. Respondent Troy DPU's SPDES permit conditions regarding proper operation and maintenance. At all times relevant to this Consent order, Respondent City of Troy's SPDES Permit has required the proper operation and maintenance of its permitted facilities in accordance with the provisions of 6 NYCRR Part 750-2, including, without limitation, §§ 750-2.8(a)(2). Respondent Troy DPU's SPDES Permit also includes BMPs for CSOs (pages 3-4). BMP #1 requires a "*written maintenance and inspection program...to insure that no discharges from the CSOs occur during dry weather and that the maximum amount of wet weather flow is conveyed to the POTW for treatment.*"

14. Respondent Troy DPU's SPDES permit conditions regarding dry weather overflows. At all times relevant to this Consent order, Respondent City of Troy's SPDES Permit has prohibited unauthorized discharges, including prohibited bypasses, from its permitted facilities in accordance with the provisions of 6 NYCRR Part 750-2, including, without limitation, §§ 750-2.8(b)(2). In addition, BMP #6 provides that "*[d]ry weather overflows from the combined sewer system are prohibited. The occurrence of any dry weather overflow shall be promptly abated and reported to the NYSDEC Region Office 4 in accordance with 6 NYCRR Part 750-2.7 [within 24hours].*"

15. Respondent Troy DPU's SPDES permit, regulatory and statutory violations.
Respondent Troy DPU violated the ECL, 6 NYCRR Part 750 and its SPDES permit in the following manner:

a. Blockages in Regulators January 3, 2006 through July 26, 2010. From January 3, 2006 through July 26, 2010, RCSD regulators were recorded by Respondent RCSD as “plugged” 398 times and overflowing the diversion dams to the CSO outfalls was occurring during “dry” weather conditions as opposed to during “rain,” “snow” or “snowmelt.” 316 of the 398 instances of plugged regulators occurred in the City of Troy. The 316 instances are in violation of the proper operation and maintenance provisions of BMP #1 in Respondent Troy DPU’s SPDES permit, ECL §§ 17-0505 and 17-0803, and 6 NYCRR Part 750-2.8(a)(2) as cited both in the permit and herein.

b. Blockages, Back-ups and High Flows in Regulators August 2010 through August 2011; failure to report. From August 2010 through August 2011, Respondent RCSD recorded 193 instances of “overflows” of its diversion dams occurring in its regulators. 169 of the 193 overflow events occurred in the City of Troy. Of these 169 events in the City of Troy, 98 were instances of “plugged” regulators, 22 were “back-ups” into regulators from the interceptor; and 49 were “high flow” in the regulators during dry weather conditions. The 169 overflow events in Troy are in violation of the proper operation and maintenance provisions of BMP #1 in Respondent Troy DPU’s SPDES permit, ECL § 17-0505 and 17-0803, and 6 NYCRR Part 750-2.8(a)(2) as cited both in the permit and herein.

c. Respondent Troy DPU also failed to report within 24 hours any of the at least 87 unauthorized discharges that occurred (among the 169 events) in the regulators in Troy between July 31, 2010 and August 31, 2011, in violation of BMP #6 in its SPDES permit and 6 NYCRR Subpart 750-2.7(c).

d. Unauthorized discharges. 87 unauthorized discharges occurred from Troy’s CSO outfalls (among the 169 events) between July 31, 2010 and August 31, 2011, in violation of BMP #6 in its SPDES permit as well as ECL §§ 17-0803, 17-0701 and 17-0511, and 6 NYCRR Subparts 750-1.4(a) and 750-2.8(b)(2).

Respondent City of Rensselaer:

16. Respondent City of Rensselaer; its SPDES permit:

a. Respondent City of Rensselaer (“Respondent Rensselaer”) is a municipal agency owning, operating and having responsibility for various sewer lines located in the City, including the “collection lines” leading to the 8 RCSD regulators in the City of Rensselaer, (ii) the 8 outfall pipes extending from these regulators to the Hudson River, (iii) the 8 corresponding “outfalls” or discharge points at the Hudson River; and (iv) the public signs that are required to be located at each CSO outfall.

b. Respondent Rensselaer, and the City of Rensselaer Department of Public Works (“Rensselaer DPW”), are each a “person” as defined in ECL § 17-0105.1 and 6 NYCRR Subpart 750-1.2(64), with offices at 62 Washington Street, Rensselaer, NY 12144.

c. Respondent Rensselaer’s SPDES permit is identified in the Department’s records as SPDES No. NY-0026026; DEC No. 4-3814-00014/00001.

d. Respondent Rensselaer’s SPDES permit became effective no later than November 1, 1985, was renewed in 2001, and modified *inter alia* effective October 18, 2005. Respondent Rensselaer’s SPDES permit expired effective August 1, 2006. Respondent Rensselaer renewed its SPDES permit almost two years later effective June 1, 2008, without modification. This SPDES permit is scheduled to expire again on May 31, 2013 unless renewed by permittee.

e. While its SPDES permit was in effect, Respondent Rensselaer was/is authorized to use its 8 outfall pipes and associated 8 outfalls solely for CSOs to the Hudson River in the manner prescribed in its permit.

f. Respondent Rensselaer is responsible for the proper inspection, operation and maintenance of the above-referenced 8 collection lines, outfall pipes and CSO outfalls, as well as required public signs at each CSO outfall in accordance with its SPDES permit and applicable law. The Commissioner of the Respondent Rensselaer’s DPW is the responsible official designated by the SPDES Permit for submitting required reports to the Department.

17. Respondent Rensselaer’s SPDES permit conditions regarding proper operation and maintenance.

Respondent City of Rensselaer’s SPDES Permit has, at all times relevant to this Order on Consent and during which the SPDES Permit was in effect, required the proper operation and maintenance of its permitted facilities in accordance with the provisions of 6 NYCRR Part 750-2, including, without limitation, §§ 750-2.8(a)(2). At all times relevant to this Consent Order, Respondent Rensselaer was subject to the provisions of 6 NYCRR Subpart 750, including without limitation Subpart 750-2.8(a)(2). Respondent Rensselaer’s SPDES Permit also includes BMPs for CSOs (pages 3-4). BMP #1 requires a “*written maintenance and inspection program...to insure that no discharges from the CSOs occur during dry weather and that the maximum amount of wet weather flow is conveyed to the POTW for treatment.*”

18. Respondent Rensselaer’s SPDES permit conditions regarding dry weather overflows.

At all times relevant to this Consent order and during which the SPDES Permit was in effect, Respondent Rensselaer’s SPDES Permit has prohibited unauthorized discharged, including prohibited bypasses, from its permitted facilities in accordance with the provisions of 6 NYCRR Part 750-2, including, without limitation, §§ 750-2.8(b)(2). At all times relevant to this Consent Order, Respondent

Rensselaer was subject to the provisions of 6 NYCRR Subpart 750, including without limitation Subpart 750-2.8(b)(2). Respondent Rensselaer's SPDES permit also includes BMPs for CSOs (pages 3-4). BMP #6 provides that "[d]ry weather overflows from the combined sewer system are prohibited. The occurrence of any dry weather overflow shall be promptly abated and reported to the NYSDEC Region Office 4 in accordance with 6 NYCRR Part 750-2.7."

19. Respondent Rensselaer operates two unpermitted CSO outfalls.

Respondent Rensselaer operates two unpermitted CSO outfalls. The first is located on Farley Drive and discharges to Unnamed Tributary of the Hudson River. The second is located on Broadway and discharges to Mill Creek. Neither CSO outfall is in Respondent Rensselaer's SPDES permit.

20. Respondent Rensselaer's SPDES permit, regulatory and statutory violations.

Respondent Rensselaer violated its SPDES permit and New York State regulations and statutes in the following manner:

a. Discharges at an Unpermitted Facility. From August 2, 2006 through May 31, 2008, Respondent Rensselaer had no valid SPDES permit in effect. During this interval of 22 months, there occurred an annual average of 52 CSOs from one or more of 8 CSO outfalls in the City of Rensselaer, or an estimated 95 CSO discharges over 22 months from one or more of the 8 CSO outfalls. CSO discharges from each outfall are separate unpermitted discharges. During the same interval, 40 instances of plugged regulators during dry weather conditions were recorded by RCSD as having occurred in the City of Rensselaer. As a result, at least 95 unpermitted discharges occurred during this interval of 22 months in violation of ECL §§ 17-0505, 17-0803, 17-0701 and 17-0511, and 6 NYCRR Subparts 750-1.4(a) and 750-2.8(b)(2).

b. Respondent City of Rensselaer has two unpermitted CSO outfalls (Farley Drive, Broadway). During all times relevant to this Order on Consent at least one CSO occurred at each location, resulting in no fewer than two violations of ECL §§ 17-0505, 17-0803, 17-0701 and 17-0511, and 6 NYCRR Subparts 750-1.4(a) and 750-2.8(b)(2).

21. Failure to timely renew SPDES Permit.

Respondent City of Rensselaer's CSO SPDES permit expired on August 1, 2006 and no renewal was effective until May 31, 2008, in violation of 6 NYCRR Subpart 750-1.16(a) which requires any permittee to file for renewal at least 180 days prior to the expiration of a SPDES permit.

22. Blockages in Regulators January 3, 2006 through July 26, 2010.

From January 3, 2006 through July 26, 2010, RCSD regulators were "plugged" 398 times and overflowing the diversion dams to the CSO outfalls was occurring. 82 of the 398 instances occurred in the City of Rensselaer. The 82 instances are in violation of the proper operation and maintenance

provisions of BMP #1 in Respondent City of Rensselaer's SPDES permit and/or ECL §§ 17-0505 and 17-0803, and 6 NYCRR Part 750-2.8(a)(2) as cited both in the permit and herein.

23. Blockages, Back-ups and High Flows in Regulators August 2010 through August 2011: failure to report.

a. From August 2010 through August 2011, Respondent RCSD recorded 193 instances of "overflows" of its diversion dams occurring in its regulators. 24 of the 193 overflow events occurred into the outfall pipes of the City of Rensselaer. Of these 24 events in the City of Rensselaer, all were instances of "plugged" regulators. The 24 overflow events are in violation of the proper operation and maintenance provisions of BMP #1 in Respondent City of Rensselaer's SPDES permit and/or ECL §§17-0505 and 17-0803, and 6 NYCRR Part 750-2.8(a)(2) as cited both in the permit and herein.

b. Respondent City of Rensselaer also failed to report within 24 hours either of the 2 unauthorized discharges that occurred (among the 24 events) between July 31, 2010 and August 1, 2011, in violation of BMP #6 in its SPDES permit and 6 NYCRR Subpart 750-2.7(c).

24. Unauthorized discharges.

The 2 unauthorized discharges from Respondent City of Rensselaer's CSO outfalls between July 31, 2010 and August 1, 2011 were not authorized by Respondent's SPDES permit and were in violation of BMP #6 in its SPDES permit as well as ECL §§ 17-0803, 17-0701 and 17-0511, and 6 NYCRR Subparts 750-1.4(a) and 750-2.8(b)(2).

25. Settlement.

In settlement of Respondents' civil liability for the aforesaid violations, Respondents, RCSD, City of Rensselaer, and City of Troy DPU, admit the violations set forth herein, as attributed, respectively, to each herein, consent to the entry of this Order on Consent, and waive all rights to any hearing regarding the remedial measures, payments and other requirements contained herein, and agree to be bound by the terms, provisions and conditions contained herein.

NOW, THEREFORE, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. CIVIL PENALTY

A. **Respondent RCSD.** With respect to the violations set forth above, Respondent RCSD is hereby assessed a civil penalty in the amount of two hundred seventy-five thousand dollars (\$275,000.00), of which fifty thousand dollars (\$50,000.00) shall be payable to the Department within sixty (60) days of the effective date of this Order on Consent.

B. The remaining amount, two hundred twenty-five thousand dollars (\$225,000.00), shall be

suspended, provided Respondent RCSD strictly adhere to the terms and conditions of this Order on Consent, including the Schedule of Compliance (Appendix A) attached hereto.

C. **Respondent Troy DPU.** With respect to the violations set forth above, Respondent Troy DPU is hereby assessed a civil penalty in the amount of two hundred thousand dollars, (\$200,000.00), of which twenty-five thousand dollars (\$25,000.00) shall be payable to the Department within sixty (60) days of the effective date of this Order on Consent.

D. The remaining amount, one hundred seventy-five thousand dollars (\$175,000.00), shall be suspended, provided Respondent Troy DPU strictly adhere to the terms and conditions of this Order on Consent, including the Schedule of Compliance (Appendix A) attached hereto.

E. **Respondent Rensselaer.** With respect to the violations set forth above and in Appendix B to this Order, Respondent Rensselaer is hereby assessed a civil penalty in the amount of one hundred seventy-five thousand dollars (\$175,000.00), of which twenty-five thousand dollars (\$25,000.00) shall be payable to the Department within sixty (60) days of the effective date of this Order on Consent.

F. The remaining amount, one hundred fifty thousand dollars (\$150,000.00), shall be suspended, provided Respondent Rensselaer strictly adhere to the terms and conditions of this Order on Consent, including the Schedule of Compliance (Appendix A) attached hereto.

G. Each Respondent shall pay its respective civil penalty amount, as identified in Subparagraphs I.A, I.C, and I.E to this Order on Consent, by check made payable to the "Department of Environmental Conservation," which shall be forwarded to the Department of Environmental Conservation, Office of General Counsel, 625 Broadway, 14th Floor, Albany, NY 12233-5500, attention: Elissa Armater. The DEC case number appearing on the first page of this Order on Consent shall be endorsed on the face of the check.

H. The suspended penalty assessed to the respondents, collectively totaling \$550,000, may be reduced over time based on the Respondents' compliance with this Consent Order, including the Schedule of Compliance.

I. As is set forth in the Compliance Schedule, Respondents are to have submitted the deliverables called for in Items 1, 2, 3 and 4 therein, as well as the Farley Drive submission called for in Item 6 therein, by or within one year after the effective date of this Consent Order. In the event that Respondents have been in continuous compliance with the terms and conditions of this Consent Order, including the Compliance Schedule, throughout the first year (twelve months) following the effective date

of this Consent Order, then the total suspended penalty will be reduced from \$550,000 to \$450,000.

J. As is set forth in the Compliance Schedule, Respondents are to have submitted the deliverables called for in Items 5(a) and 5(b) therein by or within two years after the effective date of this Consent Order. In the event that Respondents have been in continuous compliance with the terms and conditions of this Consent Order, including the Compliance Schedule, throughout the first two years (24 months) that follow the effective date of this Consent Order, then the total suspended penalty will be reduced from \$450,000 to \$350,000.

K. As is set forth in the Compliance Schedule, Respondents are to have submitted the deliverables called for in Items 5(c), 5(d), and 5(e) therein by or within two years after the Department's approval of the Albany Pool Long Term Control Plan. In the event that Respondents have been in continuous compliance with the terms and conditions of this Consent Order, including the Compliance Schedule, throughout the period extending from the effective date of this Consent Order to two years (24 months) following the Department's approval of the Alban Pool Long Term Control Plan, effective date of this Consent Order, then the total suspended penalty will be reduced from \$350,000 to \$300,000.

L. The total suspended penalty will be reduced to \$200,000 pending Respondents' full implementation of their respective, approved five-year capital improvement plan and full cost pricing as called for in Items 5(d) and 5(e) in the Compliance Schedule.

M. In the event that the total suspended penalty is reduced in accordance with subparagraphs I.H through I.M, the reduction shall be allocated in pro rata shares to the Respondents, respectively, in accordance with the proportionate share of each Respondent for the total original suspended penalty set forth in subparagraphs I.B, I.D and I.F herein.

N. If a Respondent violates any term of this Order on Consent, the whole amount of that Respondent's respective suspended penalty amount, as identified in Subparagraphs I.B, I.D, and I.F to this Order on Consent, or any portion thereof, shall be due from that Respondent within sixty (60) days of receiving written notice from the Department that such penalties are due. The determination of the suspended penalty amount due shall be in the Department's sole discretion. Any suspended penalties owed shall be submitted in accordance with the terms of paragraph I.G. above.

II. ENVIRONMENTAL BENEFIT PROJECT

A. Part of the payable portion of the civil penalties described in paragraph I above, in an amount of up to \$80,000 may be spent by Respondents jointly on one or more Environmental Benefit Projects

("EBPs"), as may be approved and then set forth in Appendix B, in accordance with the Department's EBP Guidance. Appendix B is hereby incorporated into, and made an enforceable part of, this Order. Any violation of the terms of Appendix B shall be a violation of the terms of this Order. Respondents shall certify in writing that they have complied with each milestone date set forth herein and in Appendix B.

B. Within 60 days of the effective date of this Order on Consent, unless the Department determines that additional time is warranted and grants an extension in writing, Respondents shall submit to the Department for approval a description of, and plan for, an "EBP" that includes a schedule for implementation ("EBP Implementation Plan"), which is subject to the Department's review and approval. Respondent shall make such changes to the EBP Implementation Plan as the Department may require. If the EBP Implementation Plan has not been approved by the Department within 60 days of the effective date of this Order on Consent, or if a Department's proposed EBP has not been approved within 90 days of the effective date of this Order on Consent, then the amount set forth in this paragraph (\$80,000.00) shall be paid as part of the payable portion of the civil penalty for the violations identified in this Order on Consent, in accordance with the terms of paragraph I above. Upon the Department's approval, the EBP Implementation Plan or the Department's approved EBP shall be an enforceable part of this Order on Consent.

C. Any EBP approved under this Order on Consent is subject to the following, and Respondents shall be required to certify that: Respondents are not required to fund the EBP by any law, regulation, or other legally binding obligation; Respondents are not legally required to fund the EBP as injunctive relief in this or any other case; Respondents have not received, are not presently negotiating to receive, and will not seek in the future to receive credit in any other enforcement action or legal proceeding based upon undertaking the EBP; Respondents have not obtained and will not obtain any grant funds either to perform the project or based upon the performance of the project; Respondents have not planned to perform the project, or any element thereof, at the time the violations were detected; Respondents will not claim any type of tax advantage based upon undertaking the EBP; Upon completion of the EBP, any oral or written statement by Respondents (or a third party at the request of Respondents) in reference to said EBP shall include language stating that said EBP was undertaken as part of the of the resolution of an enforcement action for the violations described in this Order.

D. Any written or formal oral statement made by Respondents in reference to the EBP, if any, shall include the following language: "This Environmental Benefit Project was undertaken in connection with the settlement of an enforcement action taken by the New York State Department of Environmental

Conservation for violations of New York state law and Department regulations.”

III. COMPLIANCE SCHEDULE

Each Respondent shall each perform and strictly adhere to its respective compliance actions and milestones as set forth in the Schedule of Compliance, attached as Appendix A of this Order. Appendix A is hereby incorporated into, and made an enforceable part of this Order. Any violation of the terms of Appendix A shall be a violation of the terms of this Order. Each Respondent shall certify to the Department in writing when it has complied with each of its respective milestone tasks and deadlines as set forth in Appendix A.

IV. SUBMISSIONS TO THE DEPARTMENT

Submissions by one or more Respondents to the Department pursuant to the Compliance Schedule and any other provision of this Order shall be approvable submissions. Pursuant to 6 NYCRR §750-1.2(8), “approvable” is defined as that which can be approved by the Department with only minimal revision. Minimal revision shall mean revised and resubmitted to the Department within sixty days of notification by the Department of the revisions that are necessary. All approvable engineering submissions must include the seal and signature of an engineer licensed to practice in New York State. The submission of approvable documents tends to be facilitated by prior submission of drafts as attachments to quarterly progress reports combined with discussion of the drafts during quarterly meetings, well in advance of the due date for the particular submission.

V. QUARTERLY PROGRESS REPORTS AND MEETINGS WITH THE DEPARTMENT

A. The Respondents shall submit a joint progress report on a quarterly basis detailing the status of each item required in this Order, including the Schedule of Compliance in Appendix A of this Order. The quarterly reports shall be submitted by April 15th, July 15th, October 15th, and January 15th of each year during the duration of this Order and shall detail the status of each item over the previous three (3) month period.

B. Respondents shall jointly coordinate quarterly meetings with the Department to discuss the status of each item required in this Order, including the Schedule of Compliance. Each quarterly meeting shall be coordinated to occur no later than 30 days following the submission date for each quarterly report, as identified above. Quarterly meetings shall occur for at least the first three (3) years of the Order or until the Department determines that they are no longer needed.

C. The second Quarterly Meeting to occur under this Order shall address, among other items, Respondents' draft Inter-municipal Agreement, which shall be submitted by or before July 15, 2012, and a representative of each Respondent with authority to negotiate the Inter-municipal Agreement shall attend.

VI. STIPULATED PENALTIES

A. In the event that a Respondent fails to satisfy any milestone task or deadline for completion of any milestone task as set forth in Appendix A to this Order on Consent, or violates any term of this Order on Consent, the Department shall be entitled to judgment against that Respondent(s). Each Respondent, respectively, hereby consents to the entry of judgment against it in New York State Supreme Court, for a stipulated penalty encompassing each day of such violation of this Order. Said stipulated penalties shall be in the following amounts:

<u>PERIOD OF NON-COMPLIANCE</u>	<u>PENALTY PER DAY</u>
1st Day through 30th Day	\$ 250/day
31st Day through 60th Day	\$ 350/day
Each Day beyond the 60th Day	\$ 500/day

B. Any stipulated penalty judgment shall become due and payable, and may be entered, upon ten (10) calendar days notice to Respondent(s). These stipulated penalties shall be in addition to any penalties assessed by the Department set forth in paragraph I above.

VII. DEFAULT

The failure of one or more Respondents to comply fully and/or in a timely fashion with any provision of this Order on Consent shall constitute a default and a failure to perform an obligation under this Order and under the ECL by the Respondent(s), and shall constitute sufficient grounds for revocation pursuant to 6 NYCRR 621.13 of any permit, license, certification or approval issued to the Respondent(s) by the Department.

VIII. BINDING EFFECT

This Order shall be deemed to bind each Respondent, its respective officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for each Respondent, respectively, including, without limitation, any subsequent operator of the facilities that are the subject of the respective, above-cited SPDES permits ("permitted facilities), who may carry on activities now conducted by any of the respective Respondents at the permitted facilities, and any

successor in title to the respective permitted facilities or to any interest therein. Each Respondent, respectively, shall provide a copy of this Order on Consent (including any submissions incorporated herein) to any contractor or subcontractor hired to perform work required under this Order on Consent, and shall require compliance with this Order on Consent as a term of any contract for performance of work under this Order on Consent. Respondents shall nonetheless be responsible for ensuring that all work performed under this Order on Consent is in compliance with the terms of this Order.

IX. TERMINATION AND RESERVATION OF RIGHTS

A. This Order on Consent shall be deemed completely satisfied and shall terminate when each of the following conditions has been fully satisfied by all three Respondents: (1) each Respondent has paid its respective civil penalties set forth in paragraph I above; (2) the Department has received from each Respondent a written certification of timely completion of the respective compliance actions required of each Respondent by Appendix A; the Department has provided each Respondent with a written verification of the written certification of timely completion of the compliance actions required by Appendix A; and each EBP, as governed by Appendix B, has been similarly certified and verified as having been completed in accordance with the terms and schedule in or pursuant to Appendix B.

B. Upon timely payment of civil penalty required under paragraph I above and the completion of the compliance items set forth in Appendices A and B, the Department shall release the Respondents from further liability for penalties under the ECL arising from the violations set forth herein.

C. However, nothing herein shall be construed as a release or waiver by the Department of its rights to: (1) seek injunctive relief to abate any violation of law or this Order on Consent; (2) seek stipulated penalties and entry of judgment as provided in paragraph VI of this Order; (3) seek penalties and other relief for any violations not set forth in this Order on Consent, including its Appendices; (4) re-allege the violations listed in this Order on Consent to obtain injunctive relief or damages in support of natural resource damage claims; (5) seek to modify, suspend, or revoke any Department-issued permit; (6) seek any applicable criminal sanctions against any Respondent or any other party; or (7) seek issuance by the Commissioner or his duly authorized representative of a summary abatement order against any or all Respondents. In addition, the Department reserves all such rights as it has to require Respondents to take any additional measures required to protect human health or the environment.

X. ACCESS

For the purpose of insuring compliance with this Order on Consent, each Respondent shall allow duly authorized Department representatives access to its respective facilities and any appurtenances

involved herein, without prior notice, to enable Department representatives to inspect and determine the status of the Respondent's compliance with this Order on Consent.

XI. FORCE MAJEURE

A. Respondent shall not be in default of the provisions of this Order on Consent if its non-compliance is directly attributable to an Act of God, war, strike, judicial injunction, catastrophic condition, or other circumstance that is entirely beyond its control and which Respondent's due diligence could not prevent (force majeure). The Respondent shall notify the Department, in writing, within 10 days of any claimed force majeure event that may lead to delays in compliance, or the prospective inability to comply with this Order on Consent, and shall promptly request modification of this Order prior to such noncompliance. The Respondent shall include in such notice the measures taken and to be taken by the Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such ten-day period constitutes a waiver of any claim that a delay is not subject to penalties. Each Respondent shall have the burden of proving that its respective non-compliance with this Order is directly attributable to a force majeure event, and that its compliance with this Paragraph XI constitutes a defense to compliance with this Order on Consent.

B. Regardless of any force majeure event asserted under this paragraph, nothing set forth herein relieves any Respondent of its respective obligations to provide 24-hour notices, file Noncompliance Reports, and submit or issue any other notices and reports as required by law and/or its respective SPDES permit.

XII. COMMUNICATIONS

Copies of all correspondence/reports to the Department required under this Order on Consent shall be provided to the following contacts or their successors at the Department:

Joseph DiMura, P.E.
Director, Bureau of Water Compliance Programs
Division of Water
625 Broadway, 4th Floor
Albany, NY 12233-3505

and

Paul Kolakowski, P.E.
Wastewater Permits Section
Division of Water
625 Broadway, 4th Floor
Albany, NY 12233-3506

and

Andrea Dzierwa, P.E.
Regional Water Engineer
DEC Region 4
1130 North Wescott Road
Schenectady, NY 12306

and

Derek Thorsland, P.E.
DEC Region 4
1130 North Wescott Road
Schenectady, NY 12306

and

Carol Conyers, Esq.
Office of General Counsel
625 Broadway, 14th Floor
Albany, NY 12233-5500

Copies of all correspondence to Respondents required under this Order on Consent shall be provided to:

Gerald Moscinski, P.E., Administrative Director
Rensselaer County Sewer District
Water Street
Troy, NY 12180

and

Neil R. Bonesteel, P.E., Chief Water Plant Operator
City of Troy, Department of Public Utilities
25 Water Plant Road
Troy, NY 12182

and

Sarah Stern Crowell, AICP
City of Rensselaer, Director of Planning and Development
62 Washington Street
Rensselaer, NY 12144-2696

Any party may change its designee(s) under this paragraph upon written notice to the other parties.

XIII. MODIFICATION

If a Respondent desires that any of the provisions, terms or conditions of this Order on Consent be changed, it shall make timely written application setting forth the grounds for the relief sought to Carol Conyers, Esq., at the above address, and shall send a copy simultaneously to the other Respondents. Any change to this Order on Consent must be in writing and signed by all of the Respondents and the Commissioner or his designee.

XIV. INDEMNIFICATION

Each Respondent shall indemnify and hold harmless New York State, the Department, and any of its employees, contractors or representatives for any and all claims, actions, suits, damages, and costs of every name and description, arising out of or resulting from each respective Respondents' acts, or from actions taken by the Department in fulfillment or attempted fulfillment of the provisions of this Order on Consent to the extent that they are not caused by intentional or grossly negligent acts of New York State, the Department or any of their employees or contractors.

XV. ENTIRE ORDER

This Order on Consent and annexed Appendices A and B constitute the entire agreement of the parties. No obligation of any Respondent or all Respondents shall be deemed to have been waived or otherwise modified without the express written consent of the Commissioner, or his designee.

XVI. EFFECTIVE DATE

The effective date of this Order on Consent is the date it is signed by the Commissioner or his designee.

DATED: Albany, New York

March 27th 2012

**JOSEPH J. MARTENS, COMMISSIONER
NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

By:  _____

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order without further notice, waives its right to a hearing herein as provided by law, and agrees to be bound by the terms, conditions and provisions contained herein. The undersigned represents and affirms that they have the legal authority to bind Respondent to the terms and conditions of this Order.

RENSSELAER COUNTY SEWER DISTRICT NO. 1:

By: Martin T. Reid
(signature)

Name: Martin T. Reid
(print or type)

Title: Chair of Rensselaer County Legislature
(print or type)

Date: March 15, 2012

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF Rensselaer)

JESSICA L. CHARETTE
Notary Public, State of New York
No. 01CH6207016
Qualified in Rensselaer County
Commission Expires 6/8/2 013

On the 15 day of March, in the year 2012, before me, the undersigned, personally appeared Martin Reid, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her capacity as shown in the instrument, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Jessica Charette
NOTARY PUBLIC

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order without further notice, waives its right to a hearing herein as provided by law, and agrees to be bound by the terms, conditions and provisions contained herein. The undersigned represents and affirms that they have the legal authority to bind Respondent to the terms and conditions of this Order.

CITY OF RENSSELAER:

By: *Daniel J. Dwyer*
(signature)

Name: DANIEL J. DWYER
(print or type)

Title: MAYOR
(print or type)

Date: 03/13/12

ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF RENSSELAER) ss:

On the 13 day of March, in the year 2012, before me, the undersigned, personally appeared Daniel J. Dwyer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/her capacity as shown in the instrument, and that by his/~~her~~ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Sharon A. Butler
NOTARY PUBLIC SHARON A. BUTLER
Notary Public, State of New York
No. 01BU6046055
Qualified in Schenectady County
Commission Expires August 7, 2014

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order without further notice, waives its right to a hearing herein as provided by law, and agrees to be bound by the terms, conditions and provisions contained herein. The undersigned represents and affirms that they have the legal authority to bind Respondent to the terms and conditions of this Order.

CITY OF TROY:

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

Date: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF _____)

On the _____ day of _____, in the year 2012, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her capacity as shown in the instrument, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

SHARON A. BUTLER
Notary Public for the State of New York
My Commission Expires on _____
County of _____
New York State

NOTARY PUBLIC

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order without further notice, waives its right to a hearing herein as provided by law, and agrees to be bound by the terms, conditions and provisions contained herein. The undersigned represents and affirms that they have the legal authority to bind Respondent to the terms and conditions of this Order.

CITY OF TROY:

By: Louis Rosamilia
(signature)

Name: Louis A. Rosamilia
(print or type)

Title: MAYOR
(print or type)

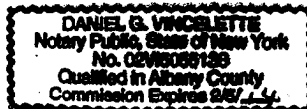
Date: 3/13/2012

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF Rensselaer)

On the 13th day of March, in the year 2012, before me, the undersigned, personally appeared Louis Rosamilia, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her capacity as shown in the instrument, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
NOTARY PUBLIC



CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order without further notice, waives its right to a hearing herein as provided by law, and agrees to be bound by the terms, conditions and provisions contained herein. The undersigned represents and affirms that they have the legal authority to bind Respondent to the terms and conditions of this Order.

CITY OF RENSSELAER:

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

Date: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF _____)

On the _____ day of _____, in the year 2012, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her capacity as shown in the instrument, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

APPENDIX A -- Schedule of Compliance

*EDO = Effective Date of Order

Compliance Action	Due Date
<p>1. Maintenance / Inspection Program. The Respondents shall jointly develop and submit to the Department for review and approval a written maintenance and inspection program for the combined sewer system (CSS). The program shall cover the entire CSS, including all catch basins, combined sewers, dams, weirs, orifices, regulators, tide gates, interceptors, outfalls, pump stations and outfall signs. The purpose of the program is to minimize the occurrence of dry weather overflows (DWOs) and maximize the wet weather flow conveyed to the publicly owned treatment works (POTW) for treatment. The written maintenance and inspection program must include, at a minimum, the following elements, with sub-items (a) through (c) to be submitted to the Department for review and approval in accordance with the due dates shown:</p>	01/01/2013
<p>a) A survey of the existing conditions to be used as baseline for the program, including a digital photographic survey of the regulating chambers; a survey to determine the condition of all dams, weirs, and orifices and the operational status of all dynamic equipment in the regulating chambers (adjustable gate / float regulators and tide gates); a survey to determine which CSO outfalls are visible or submerged, including tidal variations; and a digital photographic survey of the visible CSO outfalls and outfall signs.</p>	07/01/2012
<p>Respondents shall ensure compliance with the discharge notification requirements of ECL §17-0815-a within 12 months of the EDO.</p>	04/01/2013
<p>b) A jointly developed work plan that identifies procedures, frequency, and documentation of inspection activities. The procedures shall identify the specific tasks to be undertaken by each Respondent. The frequency of each type of inspection shall be determined. Documentation (inspections forms) shall be developed. The inspection form for regulator inspections must indicate, at a minimum: (i) date, time, and current weather conditions; (ii) whether the regulator is allowing all flow to enter the interceptor; (iii) if all flow is not entering the interceptor, why is it not all entering the interceptor (blockage, high flows, backup, etc.); (iv) whether flow is breaching the diversion structure and passing through the tide gate (if applicable); (v) whether the tide gate (if applicable) is functioning properly; and (vi) if the reporting requirements of the SPDES permits (specifically BMP No. 6) have been met.</p>	10/01/2012
<p>c) The Rensselaer County Sewer District (RCSD) shall prepare a written evaluation of the existing conditions of all dams, weirs, orifices, adjustable gates / float regulators, and tide gates, including the rationale behind the decision to decommission any original equipment and justification for why the equipment should be permanently decommissioned or put back into service to maximize the wet weather flow conveyed to the POTW for treatment. A schedule of implementation (based, in part, upon the magnitude of necessary repairs to the structures that need to be modified) for the chosen actions shall be included in the program. The schedule will become an enforceable part of this Order following Department review and approval.</p>	01/01/2013

<p>d) Monthly submission of a summary report by the 28th day of following month summarizing the inspection activity and inspection results of the previous month, including documentation that the SPDES reporting requirements have been met.</p>	<p>EDO</p>
<p>e) Joint annual evaluations of the program and the monthly reports to identify recurrent problems and determine program modifications necessary to adequately address recurrent problems. The annual evaluation must include an annual submission to the Department identifying the recurrent problems and outlining the program modifications to adequately address recurrent problems.</p>	<p>EDO</p>
<p>2. Inter-municipal Agreement. Submit to the Department for review and acceptance an enforceable inter-municipal agreement between the Respondents (“agreement” or IMA). The agreement must address each Respondent’s responsibility as required by their respective SPDES permits and this order, and include cost-sharing, indemnity and access provisions necessary to fund and otherwise carry out the terms of the agreement. The submission must include a schedule for the enactment of any ordinances necessary in order for the agreement to be carried out. The schedule will become an enforceable part of this Order following Department review and acceptance.</p>	<p>04/01/2013 including municipal approvals</p>
<p>3. Regulators not capable of passing all dry weather flow. Regulator Capacity and Alternatives Assessments. The Respondents shall perform an evaluation of the capacity of all regulators for diversion of “dry weather flow,” as that term is defined by the EPA CSO Policy (FR Vo. 59, No. 75, Tuesday, April 19, 1994, pp. 18688-18697), to the interceptor sewer system conveying wastewater from the Cities of Troy and Rensselaer to the RCSD wastewater treatment plant (WWTP). The Stormwater Management Model (SWMM) developed for the Albany Pool CSO LTCP shall be utilized in performing the analysis. The model shall be updated to reflect regulator modifications performed by RCSD for the purposes of eliminating dry weather overflows (DWOs). The SWMM shall then be utilized for the purposes of identifying those regulators that have dry weather capacity limitations and evaluating cost-effective alternatives to eliminate DWOs pursuant to 6 NYCRR § 750-2.8(b)(2).</p> <p>Engineering Report. Upon completion of the Regulator Capacity and Alternatives assessments, an Engineering Report and schedule shall be prepared by a professional engineer, licensed in and by the State of New York, recommending and defining projects to be performed for the purposes of eliminating dry weather capacity limitations identified at those regulators determined to be susceptible to DWOs. The schedule shall include interim deadlines for submitting engineering plans, starting construction and substantial completion for each project recommended in the report. The schedule shall become an enforceable part of this Order following Department review and approval.</p> <p>Submission of the Regulator Capacity and Alternatives Assessments and the Engineering Report shall be completed no later than the effective date of the Order plus one year. Completion of the recommended projects will be in accordance with the schedule provided in the engineering report and as approved by the Department.</p>	<p>04/01/2013</p>

<p>4. Public Education Program. The Respondents shall jointly develop and submit to the Department for review and approval an inter-municipal public education program that will provide information to the public regarding combined sewer systems and their impacts on water quality. The program shall educate the public on how to identify a CSO (i.e. outfall signs) and how to report problems (i.e. DWOs). The program should educate the public on the consequences (both on the sewer system and the receiving water) of depositing inappropriate wastes in the sewer system. Information developed by other reputable sources such as NYWEA or WEF can be used, but all information must be made available to the public at no cost.</p>	<p>01/01/2013</p>
<p>5. Asset Management Plan. Each Respondent shall develop and submit for Department review and approval an Asset Management Plan for their respective wastewater infrastructure. The Asset Management Plan shall include, at a minimum, the following items:</p> <ul style="list-style-type: none"> a) An inventory of assets (include both equipment and personnel); b) An assessment of criticality and condition; useful life span; c) Ranking and prioritizing; d) A 5-year capital improvement plan and schedule; and e) Full cost pricing <p>The 5-year capital improvement plan and schedule will become an enforceable part of this Order following Department review and approval. The 5-year capital improvement plan may include projects required by Item 3 of this schedule of compliance.</p>	<ul style="list-style-type: none"> a) 4/1/'13 b) 10/1/'13 c) & d) LTCP approval + 12 months e) LTCP approval + 18 months
<p>6. Unpermitted CSOs. The City of Rensselaer shall either submit information showing that the following unpermitted CSOs have been eliminated or a schedule for their elimination.</p> <ul style="list-style-type: none"> • Farley Drive • Broadway at Mill Creek • Projects identified in the Albany Pool Long-Term Control Plan (LTCP), if any, that are intended to address unpermitted CSOs must be identified and included in the schedule. The schedule shall include interim dates for submitting engineering plans, starting construction, and completing construction for each project and will become an enforceable part of this Order following Department review and approval. The construction of all projects necessary to address unpermitted CSOs shall be completed no later that the effective date of this Order (EDO) plus 18 months. 	<ul style="list-style-type: none"> 05/01/2012 (Farley Dr) 10/01/2013 (Mill Cr) 10/01/2013

APPENDIX B: Environmental Benefit Project(s)