

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENT CONSERVATION**

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In the Matter of Alleged Violations of Article 17 of the
Environmental Conservation Law (ECL) and Part 750 of
of Title 6 of the Codes, Rules and Regulations of the State of
New York (6 NYCRR) occurring in the Town of Whitestown by:

**CONSENT
ORDER**

Case #
R620060823-67

ONEIDA COUNTY

Respondent.

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WHEREAS:

1. Article 17 of the Environmental Conservation Law of the State of New York (ECL) provides the New York State Department of Environmental Conservation (Department) responsibility and authority to prevent and abate pollution of the waters of the State.
2. Respondent is a municipal corporation organized and existing pursuant to the laws of the state of New York with main offices located at 800 Park Avenue, City of Utica, County of Oneida, New York 13501. Respondent owns and/or operates the Oneida County Water Pollution Control Plant (the WPCP) located at 51 Leland Avenue, Utica, New York. Respondent also owns and/or operates the Sauquoit Creek Pump Station, which discharges into the WPCP. The Sauquoit Creek Pump Station is located in the village of Yorkville, town of Whitestown, County of Oneida, New York.
3. Pursuant to the authority granted to the Department by Article 17 of the ECL, the Department issued State Pollutant Discharge Elimination System (SPDES) Permit Number NY-0025780 (permit) to the Respondent. The permit governs the discharge of sewage to

the waters of the State. Current permit limits, levels and monitoring requirements became effective June 1, 2003 and expire June 1, 2008.

4. The permit has been effective at all times relevant hereto. The permit authorizes the Respondent to discharge treated WPCP effluent from Outfall 001 into the Mohawk River, a Class C water body of the state, and a combined sewer overflow (CSO) discharge from Outfall 002 at the Sauquoit Creek Pump Station into the Mohawk River. A CSO results when a wastewater collection system that, by design, conveys combined sewage for discharge, via an overflow, to the waters of the state when the system becomes hydraulically overloaded.

5. Wastewater is discharged to the Sauquoit Creek Pump Station from several Oneida County municipalities including the villages of Clayville, New York Mills, Yorkville, Whitesboro, New Hartford, Oriskany; portions of the town of New Hartford; and the towns of Paris and Whitestown.

6. During an inspection performed on February 6, 2006, the United States Environmental Protection Agency (USEPA) observed that the service area going into Outfall 002 appeared to be comprised of separate sanitary sewer systems.

7. On February 24, 2006, in a letter sent from Shayne Mitchell, P.E. of the Department to Steven Devan, P.E. of the Respondent (the February 24, 2006 Letter), the Department informed Respondent, among other things, of its determination that the sewers connected to Outfall 002 are not discharging from combined sewers overflows and that Outfall 002 is a sanitary sewer overflow (SSO). A SSO results when a wastewater collection system that by

design includes sewage, but incidentally includes stormwater-related inflow and infiltration discharges to the waters of the state.

8. Among other things, the February 24, 2006 letter indicated that the submission of a flow management plan would be required, and further indicated that 6 NYCRR 750-2.9(c)(1) specifies that the flow management plan for managing flows at the POTW is due within one hundred twenty (120) days.

9. On June 28, 2006, the Department noticed a modification to the SPDES permit so that it classified Outfall 002 as an SSO with conditions prohibiting discharge from Outfall 002 except during an emergency or when there is no feasible alternative to bypass.

10. On or about February 26, 2007, the Department commenced an administrative enforcement action by serving on Respondent a Notice of Hearing and Complaint. The Complaint contained four causes of action alleging that Respondent had violated the permit and ECL §17-0803 by operating Outfall 002 as an SSO, had violated 6 NYCRR Part 750-2.9 by failing to properly enact a local sewer law, had violated ECL §17-0509 by failing to secondarily treat sanitary sewage prior to discharge and had violated ECL §17-0803, the permit, and 6 NYCRR Part 750-2.1 by failing to timely submit a flow management plan. Respondent has interposed an Answer and an Amended Answer thereto.

11. ECL §17-0803 provides:

Except as provided by subdivision five of section 17-0701 of this article [not applicable], it shall be unlawful to discharge pollutants to the waters of the state from any outlet or point source without a SPDES permit issued pursuant hereto or in a manner other than prescribed by such permit . . .

6 NYCRR Part 750-1.2 provides:

1. (a) Whenever used in this Part, unless a different meaning is stated in a definition applicable to only a portion of this Part, the following terms will have the meanings set forth below:

(87) Stormwater means that portion of precipitation that, once having fallen to the ground, is in excess of the evaporative or infiltrative capacity of soils, or the retentive capacity of surface features, which flow or will flow off the land by surface runoff to the waters of the state.

(95) Wastewater means water that is not stormwater, is contaminated with pollutants and is or will be discarded.

12. The permit authorizes Respondent to operate Outfall 002 as a CSO. Because there were direct sanitary sewage discharges to the Sauquoit Creek Pump station via a separate sanitary sewage line, Respondent operated Outfall 002 as an SSO. Between 2002 and March 2006, Outfall 002 operated an average of 7 days per month and the SSO discharged an approximate average of 24 million gallons a month into the Mohawk River.

13. ECL §17-0509 requires Respondent to provide effective secondary treatment as a minimum degree of treatment prior to the discharge of sanitary sewage into the surface waters of the state.

14. From May 12, 2003 until the present time, Respondent violated 6 NYCRR Part 750-2.9(a)(4) by not enacting, maintaining and enforcing, or causing to be enacted, maintained, and enforced an up-to-date and effective sewer use law in all parts of its service area.

15. Therefore, Respondent violated the provisions of ECL §17-0803, ECL §17-0509, the permit, and 6 NYCRR Part 750-2.1(I). Pursuant to ECL §71-1929, Respondent is liable for a penalty of up to Thirty-seven thousand five hundred dollars (\$37,500) per violation per day and injunctive relief.

16. Sauquoit Creek Pump Station overflows discharge directly upstream of section 12 of the Mohawk River (Water Index No. H-240, portion 12), which is listed as an impaired water on New York State's Clean Water Act Section 303(d) impaired waters list for floatables, pathogens, and dissolved oxygen/oxygen demand standards.

17. The discharge of untreated sewage from the Sauquoit Creek Pump Station contributes to the impairment of section 12 of the Mohawk River.

18. In settlement of Respondent's civil liability for the aforesaid violations, Respondent admits the violations set forth herein, and has waived its right to a hearing herein as provided by law and has consented to the issuing and entering of this Order on consent pursuant to the provisions of Articles 17 and 71 of the ECL, and has agreed to be bound by the provisions, terms and conditions herein. Notwithstanding the foregoing, the existence of this Order or Respondent's compliance with it, shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party.

NOW, THEREFORE, having considered this matter and being duly advised, it is Ordered that:

I. COMPLIANCE

A. Respondent shall comply, in a timely manner, with the terms of the attached Schedule A. Schedule A is hereby incorporated into, and made an enforceable part of, this Order. Respondent's failure to comply fully and in a timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and the ECL. In the event that the Department disapproves a

submittal under this Order, such disapproval shall be considered a final agency action, and may be subject to a proceeding under Article 78 of the CPLR. Schedule A, Item 12, sets forth a final completion date for the work described therein. Respondent may request in writing the Department's consent to an extension of the final completion date provided Respondent has diligently performed the work described in Schedule A, and further provided that Respondent provides to the Department in writing a technical/engineering justification in support of the extension request, prepared and certified by a professional engineer currently licenced to practice in the State of New York. The Department shall not unreasonably withhold, deny or delay its consent for an extension of the final completion date set forth in Schedule A, Item 12.

B. Respondent shall be prohibited from making or allowing any new connection(s) and/or extensions to the collection system of Outfall 002, unless such connections and/or extensions are offset by removal of infiltration and inflow in an amount five (5) times the flow the new connection(s) and/or extensions are expected to contribute, and the Department has approved such new connection(s) and/or extension(s) in accordance with Schedule A, Item 3.

II. PENALTY

A. Upon the effective date of this Order, Respondent shall become obligated to pay a civil penalty of one hundred fifty thousand dollars (\$150,000). Payment shall be made to the Department of Environmental Conservation, 317 Washington Street, Watertown, New York 13601, attention: Regional Attorney, as set forth below.

B. One hundred and twenty thousand dollars (\$120,000) shall be paid within thirty (30) days of the effective date of this Order.

C. 1. The remaining thirty thousand dollars (\$30,000) shall be either be paid as a penalty in accordance with paragraph II. C.4 below, or paid to perform an Environmental Benefit Project(s) (“EBP”), in accordance with the terms of this paragraph.

2. Within sixty (60) days of the effective date of this Order Respondent may propose for the Department’s approval an EBP(s) for the Sauquoit Creek Basin. Any EBP proposed shall be for the betterment of the water quality and/or water quantity in Sauquoit Creek, or in the nearby Mohawk River. Any EBP proposal by Respondent shall include a specific description of the EBP(s) and a schedule for implementation of the EBP(s). Upon approval by the Department, an EBP shall be incorporated into this Order as Appendix B, and Respondent shall be bound to perform said EBP in accordance with the approved terms and schedule.

3. Respondent hereby certifies that:

- a. Respondent is not required to perform or develop any proposed EBP(s) by any law regulation or other legally binding obligation;
- b. Respondent is not required to perform or develop any proposed EBP(s) as injunctive relief in this or any other case;
- c. Respondent has not received, is 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 a proposed EBP(s);
- d. Respondent has not obtained and will not obtain any grant funds based upon performance of the listed EBPs;
- e. Respondent had not planned to perform the listed EBPs, or any element thereof, at the time the violations were detected;
- f. Upon completion of a specific listed EBP in satisfaction of this Order, any oral or written statement by Respondent (or a third party at the request of the Respondent) in reference to said EBP shall include

language stating that said EBP was undertaken as part of the resolution of an enforcement action for the violations described in this Order.

4. If the Department does not approve an EBP within one-hundred and twenty (120) days of the effective date of this Order, the remaining thirty thousand dollars (\$30,000) shall be paid to the Department as a penalty, in accordance with the terms of paragraph II.A above.

5. If the Department approves an EBP(s) with a total cost of less than thirty thousand dollars (\$30,000), the remaining amounts shall be paid to the Department as a penalty, in accordance with the terms of paragraph II.A above.

III. SETTLEMENT AND RESERVATION OF RIGHTS

A. Upon completion of all obligations created in this order, all claims for civil or administrative penalties arising from the allegations set forth in the Complaint and summarized in Paragraphs 7-17 herein, as well as all bypasses from Outfall 002 of which the Department has knowledge up to the date of this Order, shall be deemed resolved, satisfied and discharged as against Respondent.

B. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

1. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action(s) or demands whatsoever that the Department may have with respect to investigatory, remedial or corrective action or with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances, petroleum or other pollutants at or from Respondent's Sauquoit Creek Pump Station and WPCP or

areas in the vicinity of Respondent's Sauquoit Creek Pump Station and WPCP;

2. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent;

3. The Department's right, to the extent provided by law, to require that Respondent undertake additional measures required to protect public health or the environment, including interim remedial measures, at the Sauquoit Creek Pump Station during all overflow periods;

4. The Department's right, to the extent provided by law, to enforce any provision of the ECL, except as to those alleged violations, actions or omissions which are addressed in this order; and

5. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands that Respondent may have against third parties for remedial or corrective action.

C. Respondent shall comply with, and be bound by, the schedules, timetables and requirements set forth in Schedule A, and any approved reports submitted thereunder, irrespective of the availability of financial assistance from Federal, State or other sources.

D. In the event that a discharge occurs from Outfall 002 after the effective date of this Order, the Department reserves all legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department may have against Respondent regarding said discharge.

IV. STIPULATED PENALTIES

In the event Respondent fails to meet Schedule A deadlines, Respondent shall within fifteen (15) days following a written notice of a demand for payment from the Department, pay to the Department a stipulated penalty as follows:

Failure to meet Schedule A deadlines

<u>Days Overdue</u>	<u>Penalty Amount/Days overdue</u>
1 - 30	\$ 1000
31 - 40	\$ 1500
41 - 50	\$ 2000
51 - 60	\$ 2500
more than 60	\$ 5000

The total stipulated penalty is calculated by multiplying the days in violation or overdue by the corresponding penalty amount. The Department shall not be precluded from taking any action authorized by law and the Department may seek the sanctions provided in the Environmental Conservation Law in addition to assessing stipulated penalties as set forth in this order. Should the Department seek penalties and/or sanctions beyond those stipulated in this order, the Respondent shall be provided all rights mandated by applicable law and regulation.

V. FORCE MAJEURE

Respondent shall not be liable for any penalty under this Order or be subject to any proceedings or actions for any remedy or relief, if it cannot comply with any requirements of this Order, because of an act of God, war, strike, a court ruling, riot, or other such condition as to which willful misconduct, negligence or other action or failure to act on the part of Respondent was not a proximate cause; provided however, that Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and shall request an appropriate extension or modification of the provisions hereof.

VI. ACCESS

To ensure compliance with this order, the ECL, and rules and regulations thereunder, authorized representatives of the Department shall be permitted access to those premises over which Respondent has control at all reasonable times in order to make inspections to see that Respondent is in compliance.

VII. FAILURE, DEFAULT AND VIOLATION OF ORDER

Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.

VIII. INDEMNIFICATION

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and its successors (including successors in title) and assigns.

IX. BINDING

This Order is binding upon Respondent, its agents, employees, successors, assigns and all persons, firms and corporations acting subordinate thereto. Oneida County's employees, servants and agents shall be instructed to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Oneida County.

X. MODIFICATION

No change or modification to this Order shall become effective except as specifically

set forth in writing and approved by the Commissioner or a duly authorized representative.

XI. ENTIRE ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified in Paragraphs 7-17 of this order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph X of this order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this order.

XII. AUTHORITY TO SIGN

The persons signing this consent Order represent that they have full authority to bind the respective parties which they represent.

XIII. EFFECTIVE DATE

The effective date of this Order is the date on which the Commissioner or his representative signs this order.

XIV. SUBMISSIONS

All penalties required under this Order will be sent to:

Department of Environmental Conservation
317 Washington Street
Watertown, New York, 13601-3787
Attention: Regional Attorney

All submissions required under this order, other than penalties, will be sent to:

Regional Water Pollution Control Engineer
Department of Environmental Conservation
317 Washington Street
Watertown, New York, 13601-3787

- and -

Director, Bureau of Water Permits
Division of Water
625 Broadway, 4th Floor
Albany, NY 12233

XV. PLAN APPROVAL

"Approvable" within the context of this Order shall mean approved by the Department with only minimal revision. Minimal revision will mean revised and resubmitted to the Department within fifteen (15) days of notification by the Department of revisions that are necessary.

Dated: Watertown, New York
June , 2007

**ALEXANDER B. GRANNIS, COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

By: _____
Judy Drabicki
Regional Director
Region 6

EDMS#257418v2

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Respondent's Name: ONEIDA COUNTY

No. R6-20060823-67

SCHEDULE A

To settle violations of the New York State Environmental Conservation Law, the above-referenced Respondent shall, on or before the dates indicated:

	REQUIRED ACTION	DEADLINE
1.	Submit civil penalty payment of. \$150,000, subject to the terms of paragraph II above.	On the effective date of this order.
2.	Provide all Sauquoit Creek Pump Station tributary municipalities with a copy of this Order and submit proof of service to the Department.	Within 14 days of the effective date of the order.
3.	Submit to the Department an approvable plan that ensures that any new connection(s) to the collection system of Outfall 002 is (are) offset by removal of infiltration and inflow in an amount five times (5) the flow the new connection(s) is (are) expected to contribute, until such time as discharges from Outfall 002 are brought into compliance with the permit.	Within 180 days of the effective date of this order.
4.	Prior to hookup, or submission to the Department for approval of a new connection(s) and/or extension(s), whichever comes first, submit certification to the Department that any new connection(s) and/or extension(s) complies with #3 above. Allow no new connection(s) and/or extension(s) to the collection system of Outfall 002 unless in compliance with #3 above, until such time as discharges from Outfall 002 are brought into compliance with the permit.	On the effective date of this order.

5.	Submit to the Department for review and approval an approvable Flow Management Plan that includes a schedule of implementation in accordance with the February 24, 2006 letter from Shayne Mitchell to Steven Devan. The schedule shall be incorporated into this Order. (copy attached as Exhibit "A")	Within 150 days of the effective date of this order.
6.	Submit to the Department for review and comment an Inter-municipal Sewer Overflow Response Plan to address and minimize the impacts of sanitary sewer overflows into basements and out of manholes.	Within 120 days of the effective date of this Order.
7.	Implement the Inter-municipal Sewer Overflow Response Plan	Within 30 days of receipt of the Department's comments.
8.	Submit to the Department for review and approval an approvable engineering report evaluating implementation of "interim remedial measures" to reduce and/or treat discharges from the Sauquoit Creek Pump Station until such time as discharges from Outfall 002 are brought into compliance with the permit. The report should evaluate, but not be limited to, the use of overflow retention facilities and chlorination/de-chlorination of the discharge, and the short-term and/or long-term removal of inflow and infiltration. The engineering report should include a proposed implementation schedule. Any interim measures approved by the Department shall be implemented in accordance with the schedule set forth in the engineering report.	Within 180 days of the effective date of this Order.

9.	Submit proposed inter-municipal agreements and/or other enforceable legal instruments, necessary to ensure the County's authority to implement the offset program required by Schedule A, paragraph 3, and as required by 6 NYCRR Part 750 with Sauquoit Creek Pump Station tributary communities for Department review.	Within 120 days of the effective date of this order.
10.	Finalize the legal instruments required by Schedule A, paragraph 9 above, and submit documentation of such finalization to the Department.	Within 30 days of receipt of the Department's comments on the agreements.
11.	Submit to the Department an approvable plan of study, and approvable plan and implementation schedule to bring Outfall 002 into compliance with the permit by October 31, 2014. This plan of study, and plan and implementation schedule, once approved, will be affixed to and become an enforceable part of this order.	Within 3 years of the effective date of this order.
12.	Complete all actions required by the approvable plan in item 11 above.	October 31, 2014, unless this date is extended by the Department pursuant to paragraph I.A. of this Order.