



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 31 2016

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Article Number: 7016 0910 0000 4441 5837

Mr. Vincent Sapienza, P.E.
Acting Commissioner
NYC Department of Environmental Protection
59-17 Junction Boulevard, 13th Floor
Flushing, New York 11373

Re: **Administrative Compliance Order**
New York City Department of Environmental Protection
Docket Number: CWA-02-2016-3012
SPDES Permit Nos. NY0026212, NY0026158, NY0026182, NY0026191, NY0026115,
NY0026204, NY0026247, NY0026174, NY0026166, NY0026107, NY0027073,
NY0026221, NY0026239, NY0026131

Dear Acting Commissioner Sapienza:

The United States Environmental Protection Agency (“EPA”), Region 2, has made a finding that the subject facilities are in violation of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, (“CWA” or “Act”) for State Pollutant Discharge Elimination System (“SPDES”) Permit violations as described in the findings of the enclosed Administrative Compliance Order, (“Order”) issued pursuant to Section 309 of the Act.

Please acknowledge receipt of this Order by signing the acknowledgment page and returning the acknowledgment page by mail in the enclosed envelope.

If you have any questions regarding this Order, please contact Mr. Douglas McKenna, Chief Water Compliance Branch, at (212) 637-4244 or at McKenna.Douglas@epa.gov.

Sincerely,

Dore LaPosta

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosure

cc.: William Plache, Senior Counsel, NYC Law Department, via email
Carrie Noteboom, NYC Law Department, via email
James Roberts, P.E., Deputy Commissioner, NYCDEP Bureau of Water and Sewer Operations, via email

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

The City of New York
and
The New York City Department of Environmental
Protection (59-17 Junction Blvd. 13th Floor,
Flushing, NY 11373)

RESPONDENT

Proceeding pursuant to Section 309(a) of the Clean
Water Act, 33 U.S.C. § 1319(a)

ADMINISTRATIVE COMPLIANCE ORDER

CWA-02-2016-3012

NATURE OF THE ACTION

The Regional Administrator of Region 2 of the United States Environmental Protection Agency (“EPA”), acting on behalf of the Administrator of the United States Environmental Protection Agency, by the authority of the Federal Water Pollution Control Act (also referred to as the Clean Water Act, hereinafter “CWA” or “Act”), is issuing this Administrative Compliance Order (“Order”) pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), and alleges and orders as follows:

1. This is an administrative action brought against the City of New York (“NYC”) and the New York City Department of Environmental Protection (“NYCDEP”) (collectively “Respondent”) pursuant to Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).
2. Respondent is in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), by having failed to comply with the operation and maintenance terms and conditions of the fourteen permits (“Permits”) issued by the New York State Department of Environmental Conservation (“State” or “NYSDEC”), as authorized by EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), to Respondent’s various water pollution control plants (“WPCP”s) and related appurtenances, and by causing unauthorized discharges of pollutants to waters of the United States.
3. This administrative action addresses Respondent’s failure to comply with the operation and maintenance terms and conditions as set forth in the Permits. Respondent’s failure to comply with the terms and conditions as set forth in the State Pollutant Discharge Elimination System Permits has caused releases of sewage from Respondent’s Collection System, manholes, and other facilities in and connected to Respondent’s Collection System into waters of the United States, and public and private property, including, but not limited to, streets, storm drains, and buildings, including residential dwellings and buildings, located within the City of New York (hereinafter referred to as “Sewer Backups”).
4. Sewer Backups contain untreated sewage. Untreated sewage in people’s homes, public spaces, and our waters is a significant public health issue that must be addressed.

IN THE MATTER OF:

The City of New York, and, The New York City Department of Environmental Protection CWA-02-2016-3012

5. Untreated sewage contains bacteria, viruses, organic matter, parasites, toxics and metals, which may cause illness when humans come into contact with it and may require costly cleanups. Sensitive populations, including children, the elderly and those with weakened immune systems, can be at higher risk for illness from exposure to sewage.
6. Respondent reported that it reduced the number of Confirmed Sewer Backups from 4,567 in fiscal year 2012 to 2,846 in fiscal year 2015. However, Respondent also reported that in fiscal year 2015 it received over 11,000 Sewer Backup complaints, which includes the 2,846 confirmed Sewer Backups and a significant number of Sewer Backups for which Respondent has not confirmed the cause (“Unconfirmed Sewer Backups”).
7. Although Respondent has reduced the number of Sewer Backups, Respondent still has over 50 backups per 100 miles of sanitary sewer per year (Respondent has a total of 5,608 miles of combined and sanitary sewer).
8. Many of Respondent’s Sewer Backups reoccur at the same location within the same year. The ongoing occurrence of thousands of backups per year, including repeat backups at the same location, indicates continued inadequate operation and maintenance by Respondent.
9. Respondent has not addressed the violations at a pace and scale necessary to protect its residents. However, Respondent can develop cost effective solutions to remedy these violations and protect its residents as other cities have done.
10. This administrative action requires Respondent to develop an Operation and Maintenance Plan to work toward the elimination of Sewer Backups city-wide over the next seven years. Implementation of the Operation and Maintenance Plan will result in a proactive approach to the elimination of Sewer Backups.

JURISDICTION AND STATUTORY AUTHORITY

11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States except in compliance with the terms and conditions of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA § 402, 33 U.S.C. § 1342.
12. Section 502(4) of the Act, 33 U.S.C. § 1362(4) defines the term “municipality” as “a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes or other wastes.”
13. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines the term “person” to include a municipality.
14. Section 502(6) of the CWA defines “pollutant” to include, *inter alia*, sewage. 33 U.S.C. § 1362(6).
15. Section 502(7) of the CWA defines navigable waters to be “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). EPA regulations promulgated pursuant to the CWA define the term “waters of the United States” to include, among other things: 1) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; 2) all interstate waters; 3) all other waters such as intrastate lakes, rivers and streams (including intermittent streams), the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; 4) tributaries of waters of the United States; and 5) certain wetlands (including wetlands adjacent to these waters). 40 C.F.R. § 122.2.

IN THE MATTER OF:

The City of New York; and, The New York City Department of Environmental Protection CWA-02-2016-3012

16. Section 502(12) of the CWA defines “discharge of a pollutant” to mean, among other things, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
17. The term “point source” is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel...from which pollutants are or may be discharged.”
18. The term “facility” is defined in the regulations as “any NPDES ‘point source’ or any other facility... (including land or appurtenances thereof) that is subject to regulation under the NPDES program.” 40 C.F.R. § 122.2.
19. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that EPA may issue NPDES permits that authorize the discharge of any pollutant to navigable waters to “persons”, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such terms and conditions as EPA determines are necessary to carry out the provisions of the CWA.
20. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that a state may establish and administer its own permit program, and, after EPA authorizes its program, may issue Section 402 permits.
21. Federal regulations set forth a list of minimum general conditions that all NPDES permits issued under State Pollutant Discharge Elimination System (“SPDES”) permitting programs must meet. 40 C.F.R. § 122.41(e) sets forth the General Condition for “Proper Operation and Maintenance” of facilities and systems. Section 122.41(e) states that a “permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit.”
22. Pursuant to Section 309(a) (3) of the Act, 33 U.S.C. § 1319(a)(3), “...whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by him, or by a State or in a permit issued under section 1344 of this title by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.”
23. Definitions for the purposes of this Order:
 - a) **Collection System**- Respondent’s separate and combined sanitary Collection System (collectively “Collection System” or “Sewer System”).
 - b) **Sewer Backups** - shall mean a non-permitted release of sewage from Respondent’s Collection System, manholes, and other facilities in and connected to Respondent’s Collection System. This term shall include: i) discharges to waters of the United States; and ii) any release of sewage from the Collection System to private or public property that does not reach waters of the United States, including but not limited to releases to streets, storm drains, residential dwellings, and buildings. A Sewer Backup or release that is caused solely by conditions in a Private Lateral is not a Sewer Backup for purposes of this Order.
 - c) **Confirmed Sewer Backup**- shall mean a Sewer Backup that Respondent has determined was caused by Respondent’s Collection System.

IN THE MATTER OF:

The City of New York; and, The New York City Department of Environmental Protection CWA-02-2016-3012

- d) **Unconfirmed Sewer Backup** – shall mean a Sewer Backup for which Respondent has not determined the cause of and/or for which Respondent has identified that the Respondent Collection System did not show signs of surcharging at the time of inspection.
- e) **Private Lateral** - pipes and any other appurtenances not owned by Respondent that are used to convey wastewater from a building or buildings to the Respondent’s Collection System.
- f) **MS4** – Respondent’s Municipal Separate Storm Sewer System, as defined in Respondent’s MS4 Permit [SPDES Permit No. NY0287890] effective August 1, 2015 (See Part VI.B of MS4 Permit), including portions of the MS4 that connect to combined sewer overflow pipes downstream of the regulator.
- g) **Capacity Related Sewer Backups** – These include, but are not limited to, Sewer Backups related to overtaxed sewers, and include, but are not limited to, the following Customer Service Request Resolution Hansen Codes:
 - 1. SSTO – Temporarily Overtaxed Sewer (no work required);
 - 2. SSTORN – Temporarily Overtaxed Sewer due to rain;
 - 3. STOTH - Temporarily Overtaxed sewer due to other cause.

RESPONDENT

- 24. The City of New York is a political subdivision of the State of New York, duly formed under the laws of the State of New York, and is a "municipality" and a "person" within the meaning of Section 502 of the CWA, 33 U.S.C. §§ 1362 (4) and (5). NYCDEP is the agency of the City charged with the responsibility for the operation and maintenance of both separate sanitary and combined sewer systems in the City (collectively “Respondent”).
- 25. NYC is a "municipality" within the meaning of Section 502 of the CWA, as it is a "public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes...." 33 U.S.C. § 1362 (4). NYCDEP is also a "municipality" within the meaning of Section 502 of the CWA, as it is a "public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes...." 33 U.S.C. § 1362 (4).
- 26. NYC is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5). NYCDEP is also a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 27. Respondent’s Sanitary Sewer System encompasses approximately 5,600 miles of combined sewers and separate sanitary sewer pipe, and includes a portion of Respondent's more than 130,000 catch basins or inlets, pump stations, 14 WPCPs and more than 400 active combined sewer overflow (“CSO”) outfalls and associated regulators (hereafter referred to as “Collection System”).
- 28. Respondent's Collection System is the joint responsibility of the Bureau of Water and Sewer Operations ("BWSO") and the Bureau of Wastewater Treatment ("BWT"), both of which entities are located within the Respondent.
- 29. Respondent's principal place of business is located at 59-17 Junction Boulevard, Corona, New York.

GENERAL ALLEGATIONS

- 30. Respondent operates and maintains a Collection System in NYC, which collects domestic, commercial and

IN THE MATTER OF:

The City of New York; and, The New York City Department of Environmental Protection CWA-02-2016-3012

industrial wastewater, and, in the areas containing combined sewers, also stormwater runoff.

31. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA has authorized the NYSDEC to administer the federal NPDES program in New York. The NYSDEC is the authorized permitting authority for the State of New York.
32. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), EPA has authority to take action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.
33. Respondent has owned and/or operated, and continues to own and/or operate, at least the following Water Pollution Control Plants (hereinafter collectively referred to as the “WPCP”s):

Table 1: Respondent’s WPCP SPDES Facilities and applicable Permits for the period of time November 1, 2010 or January 1, 2011 to Present with effective dates and expiration dates

Name of Respondent’s Water Pollution Control Plants (WPCPs)	SPDES No.	2010/2011 Permits		2015 Permit	
		Effective Date	Expiration Date	Effective Date	Expiration Date
26th Ward	NY0026212	1/1/11	12/31/15	11/1/15	10/31/20
Bowery Bay	NY0026158	11/1/10	10/31/15	11/1/15	10/31/20
Coney Island	NY0026182	1/1/11	12/31/15	11/1/15	10/31/20
Hunts Point	NY0026191	11/1/10	10/31/15	11/1/15	10/31/20
Jamaica	NY0026115	11/1/10	10/31/15	11/1/15	10/31/20
Newtown Creek	NY0026204	11/1/10	10/31/15	11/1/15	10/31/20
North River	NY0026247	11/1/10	10/31/15	11/1/15	10/31/20
Oakwood Beach	NY0026174	1/1/11	12/31/15	11/1/15	10/31/20
Owls Head	NY0026166	1/1/11	12/31/15	11/1/15	10/31/20
Port Richmond	NY0026107	11/1/10	10/31/15	11/1/15	10/31/20
Red Hook	NY0027073	11/1/10	10/31/15	11/1/15	10/31/20
Rockaway	NY0026221	01/01/11	12/31/15	11/1/15	10/31/20
Tallman Island	NY0026239	11/1/10	10/31/15	11/1/15	10/31/20
Wards Island	NY0026131	11/1/10	10/31/15	11/1/15	10/31/20

34. The SPDES Permits listed in Table 1, above, include among their terms and conditions, provisions for the proper operation and maintenance of Respondent’s Collection System.
35. The 2010/2011 and the 2015 SPDES Permits for all of the WPCPs in Table 1 require that Respondent comply with 6 NYCRR Part 750-2. Part 750-2.8 provides in pertinent part:

The 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. Proper operation and maintenance also includes at a minimum, the following:

- (i) A preventative/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are

IN THE MATTER OF:

The City of New York; and, The New York City Department of Environmental Protection CWA-02-2016-3012

- installed or used by the permittee to achieve compliance with the conditions of the permit. A facility or system is critical if it contains process equipment that is essential for proper operation and necessary to achieve compliance with the applicable SPDES permit effluent limits;
- (ii) Written procedures for operation and maintenance, training new operators, adequate laboratory controls and appropriate quality assurance.
 - (iii) The permittee and operator shall operate the wastewater treatment facility in such a manner as to minimize the discharge of pollutants to a degree that is achievable when compared to standard practices for operation of such wastewater treatment facilities.

36. The 2010/2011 and the 2015 SPDES Permits require that Respondent comply with 6 NYCRR Part 750-2. Part 750-2.9 provides in pertinent part: "The permittee shall identify all inflow to the tributary system and remove excessive infiltration/inflow to an extent that is economically feasible."

FAILURE TO PERFORM PROPER OPERATION AND MAINTENANCE

37. Respondent's WPCPs (and related appurtenances) are subject to the operation and maintenance ("O&M") related provisions set forth at 40 C.F.R. § 122.41(e) as well as the terms and conditions of the SPDES permits issued by NYSDEC.
38. The 2010/2011 and the 2015 SPDES Permits also require that Respondent comply with 6 NYCRR Part 750-2. See Part 750-2.8 cited above in paragraph 35.
39. Respondent's failure to comply with the operation and maintenance terms and conditions as set forth in the SPDES Permits has caused Sewer Backups.
40. Causes of the sewage releases from the Collection System include blockages from grease, debris, sediment and/or root intrusion, cracks and breaks in sewer pipes, collapsed pipes, and insufficient capacity.
41. Respondent is in violation of Section 301 of the Act, 33 U.S.C. § 1311, by having failed to properly operate and maintain its Collection System as required by the terms and conditions of the SPDES Permits, which were issued pursuant to the authority of Section 402 of the Act, 33 U.S.C. § 1342.

SEWER BACKUPS

42. Pursuant to information provided to EPA by Respondent, and analyzed by EPA, EPA has determined that the Respondent's sanitary sewer system, has experienced, on a continuous basis, excessive Sewer Backups that were caused by a failure of Respondent's Collection System, as opposed to a problem in a customer's sewer line. Some of the Sewer Backups have reached waters of the United States, and as such, are unauthorized discharges. These unauthorized discharges are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
43. According to information provided by Respondent to EPA, for the period January 1, 2011 to June 30, 2015, Respondent's Collection System experienced approximately seventeen thousand (17,000) Sewer Backups, which NYCDEP confirmed were associated with a problem, upset, or malfunction of the Respondent's Collection System (Confirmed Sewer Backups).

44. Respondent reported that it reduced the number of confirmed Sewer Backups from 4,567 in fiscal year 2012 to 2,846 in fiscal year 2015. However, Respondent also reported that in fiscal year 2015 it received over 11,000 Sewer Backup complaints, which includes the 2,846 Confirmed Sewer Backups and a significant number of Unconfirmed Sewer Backups.
45. Many of Respondent's Sewer Backups reoccur at the same location within the same year. The ongoing occurrence of thousands of backups per year, including repeat backups, indicates continued inadequate operation and maintenance by Respondent.
46. The Respondent's Mayor's Management Report for fiscal year 2013 (July to June) states that approximately 4,221 Confirmed Sewer Backups occurred. And in fiscal year 2014, Respondent reported in its Mayor's Management Report that there were approximately 3,207 confirmed Sewer Backups.
47. The Respondent's 2012 and 2013 *State of the Sewers* reports each identify that 80% or more of the Confirmed Sewer Backups were due to grease or debris in the sewers. NYCDEP reported in its 2013 *State of the Sewers* report that 62% of the Confirmed Sewer Backups city-wide were caused by grease, 18% by debris, and 15% by temporarily overtaxing of the sewers due to rain (Capacity Related Sewer Backups). And NYCDEP reported in its Mayor's Management Report for fiscal year 2014 that 72% of the Confirmed Sewer Backups were caused by grease, 14% by debris, and 10% by heavy rain (Capacity Related Sewer Backups).
48. The Respondent's 2012 and 2013 *State of the Sewers* reports identified hundreds of Capacity Related Sewer Backups (up to 10 or 15% of Sewer Backups) that were due to capacity-related issues described as overtaxing of the Collection System.
49. In addition, Respondent's Mayor's Management Report for fiscal year 2015 indicates that there are a significant number of Unconfirmed Sewer Backups.
50. A substantial number of the approximately seventeen thousand Confirmed Sewer Backups for the 2011 to 2015 period that have been identified by Respondent in the Hansen Database (which is a computerized maintenance management system used by Bureau of Water and Sewer Operations to, among other things, manage work orders and log customer service requests and complaints) are described as "chronic" problems where there have been multiple backups on the same sewer segment and the same customers over a period of time. These chronic Sewer Backups have been reported at various locations throughout Respondent's Collection System.
51. In 2014 Respondent reported that 600 sewer segments had recurring Sewer Backups, of which about 400 were recurring Sewer Backups during dry weather. See Respondent's *2014 Annual CSO BMP Report* and *2014 State of the Sewers* report and 2014 Mayor's Management Report.
52. Sewer Backups occur throughout the city, but portions of Queens, Staten Island and Brooklyn are more heavily impacted by Sewer Backups.
53. The large numbers of Sewer Backups reported by Respondent, including recurring Sewer Backups that occurred during both dry and wet weather, is evidence that it has failed to provide adequate operation and maintenance of its Collection System, in violation of the terms and conditions of the applicable SPDES Permits and, therefore, is in violation of Section 301 of the Act, 33 U.S.C. § 1311.

IN THE MATTER OF:

The City of New York; and, The New York City Department of Environmental Protection CWA-02-2016-3012

54. Additionally, blockages due to sediment, debris and grease in Respondent's Collection System are a violation of the operation and maintenance provisions of its SPDES Permits and, therefore, Respondent is in violation of Section 301 of the Act, 33 U.S.C. § 1311.
55. The number of Capacity Related Sewer Backups indicates that certain sewer lines do not have sufficient capacity to handle the flow and/or there is excessive inflow and infiltration, which demonstrates that Respondent failed to provide adequate operation and maintenance of its Collection System and minimize the discharge of pollutants, as required by its SPDES Permits and, therefore, is in violation of Section 301 of the Act, 33 U.S.C. § 1311.

SEWER BACKUPS REPORTING

56. In accordance with the SPDES Permits, Respondent is required to report all illicit or unauthorized discharges.
57. Respondent has a Standard Operating Procedure ("SOP") entitled "Sewer Backup Response" that requires the completion by the field crew of the *Sewer Backup Response Checklist* when they are responding to a Sewer Backup.
58. The *Sewer Backup Response Checklist* does not contain any fields for reporting whether a Sewer Backup occurred in a separate or combined sewer area, whether there is a discharge to an MS4 catch basin, or if there are discharges from other points. Without this information, the Respondent is not able to identify and adequately report all illicit or unauthorized discharges.
59. Respondent's failure to properly report all illicit or unauthorized discharges in its Collection System or from its MS4 is an operations and maintenance failure, and as such is a violation of the terms and conditions of the SPDES Permits and, therefore, a violation of Section 301 of the Act, 33 U.S.C. § 1311.

ORDERED PROVISIONS

Wherefore, pursuant to Section 309(a) (3) of the Act, 33 U.S.C. § 1319(a) (3), EPA orders as follows:

60. **Compliance** - Upon receipt of this order, Respondent shall comply with the Clean Water Act and with the SPDES Permits (listed above in Paragraph 33), which all include specific provisions for the proper operation and maintenance of Respondent's Collection System, with the goal of eliminating Sewer Backups.
61. **Informal Conference** - Upon receipt of this Order, Respondent shall arrange for a conference with the EPA Region 2, Chief of the Water Compliance Branch. This informal conference shall be conducted within twenty (20) calendar days from receipt of this Order. For this conference, Respondent shall make personnel available who shall be capable of discussing:
- a) the findings set forth in this Order; and
 - b) Respondent's compliance efforts with regard to the operation and maintenance terms and conditions of its SPDES Permits, which are associated with sewage backups and releases occurring from its Collection System.

At the informal conference, Respondent may:

IN THE MATTER OF:

The City of New York; and, The New York City Department of Environmental Protection CWA-02-2016-3012

- c) discuss the technical matters (or any other consideration) relevant to Respondent's development of the O&M Plan ordered under paragraph 62, below;
- d) discuss actions Respondent has taken to correct any or all of the allegations herein;
- e) discuss the effect the O&M Plan would have on Respondent's operations; and/or
- f) raise any other facts or circumstances and provide whatever additional information that Respondent believes is relevant to this matter.

62. Operation and Maintenance Plan

Submission, Approval and Implementation:

- a) Within one hundred twenty (120) calendar days from receipt of this Order, Respondent shall submit to EPA an operation and maintenance plan (hereinafter "O&M Plan") for its Collection System, to address the operation and maintenance activities and procedures which are associated with Sewer Backups and releases occurring from its Collection System.
- b) EPA shall approve, disapprove, or comment on the O&M Plan submitted by Respondent pursuant to sub-paragraph (a), above. If EPA disapproves and/or comments on the O&M Plan, Respondent shall submit an updated O&M Plan that adequately addresses EPA's comments and/or disapproval within *thirty (30) days* from receipt of the comments.
- c) Upon receipt of EPA's approval of the O&M Plan, including EPA's approval of an updated O&M Plan pursuant to sub-paragraph (b), above, Respondent shall immediately commence implementation of the approved O&M Plan.
- d) In addition, during the implementation of the O&M Plan, Respondent may submit modifications to the O&M Plan to EPA for approval.

Substantive Requirements:

- e) Respondent's O&M Plan required by sub-paragraph (a) of this paragraph shall include, at a minimum, the following procedures and standards:
 1. Sewer Backup prevention and response measures;
 2. The development of a "Sewer Backup Benchmark", which will establish a benchmark for the annual level of reduction of Sewer Backups.
 3. A detailed description of the methodology exercised by Respondent to develop the Sewer Backup Benchmark (see sub-paragraph (f), below, for criteria);
 4. Respondent's O&M plan shall propose targeted reductions in Sewer Backups in the portions of the Collection System most heavily impacted by the Sewer Backups;
 5. The O&M Plan must include an implementation schedule, which will demonstrate for a minimum of seven (7) years that the Respondent has continuously achieved the annual Sewer Backup Benchmark;

IN THE MATTER OF:

The City of New York; and, The New York City Department of Environmental Protection CWA-02-2016-3012

6. The O&M Plan must include measures that will implemented beyond the initial 7-year period to ensure that Sewer Backups are adequately responded to and fully addressed, and adequate measures are taken to prevent Sewer Backups with the ultimate goal of elimination of Sewer Backups system-wide.
7. In developing the O&M Plan, Respondent shall also review, map and analyze the locations of the Unconfirmed Sewer Backups and determine if there is a relationship between the areas more prone to Confirmed Sewer Backups and those more prone to Unconfirmed Sewer Backups. To the extent that Unconfirmed Sewer Backups can be reduced through proper operation and maintenance measures in Respondent's Collection System, then Respondent shall include the Operation and Maintenance measures in the O&M Plan. Respondent shall also include a benchmark for Unconfirmed Sewer Backup reduction based on the criteria in Section 62.f below.

f) Criteria for development of the Sewer Backup Benchmark -

In the development of the Sewer Backup Benchmark, Respondent shall include and consider, at a minimum, the following procedures and standards:

1. Respondent shall establish an annual level of reduction of Sewer Backups that it will achieve via the implementation of its O&M Plan;
2. Respondent's Sewer Backup Benchmark shall be commensurate with industry standards;
3. This Sewer Backup Benchmark shall be expressed in percent reductions of Sewer Backups each year;
4. The proposed O&M Plan shall demonstrate a minimum percentage reduction in Sewer Backups in each successive year;
5. In the development of its Sewer Backup Benchmark, Respondent shall use and rely upon, but not be limited to, the following:
 - i. The references/industry guidance, industry literature and standards, including the documents referenced in this Collection Systems O&M Fact Sheet: Sewer Cleaning and Inspection, EPA 832 F 99 031, Sept 1999;
 - ii. Goals for miles of sanitary sewers (combined and separate) cleaned (jetted, rodded, degreased, etc.) each year;
 - iii. Goals for miles of sewers televised each year;
 - iv. Any other goals for preventative maintenance on the Collection System each year;
 - v. The number of full time employees dedicated to BWSO Collection System maintenance and contractors or contract dollars for Collection System Maintenance in each of the next 7 years;
 - vi. Capital investment dollar amounts for Respondent Collection System Projects each year for the next 7 years;

- vii. The miles of Collection System piping that will be replaced each year and number of miles of Collection System piping where there are capacity problems that will be corrected;
- viii. Any other factor, element or criterion that Respondent deems relevant; and
- ix. Exclude from the above analyses Sewer Backups in the combined sewer system that are the result of a storm event greater than the five year 24 hour storm.

Annual State of the Sewers Report

63. On February 15th of each year, Respondent shall submit to EPA, for review and comment, an Annual State of the Sewers Report (“Annual Report”) and also post the State of the Sewers Report prominently on the Respondent’s web site. The State of the Sewers Report must contain metrics similar to those included in the 2013 State of the Sewers Report for the previous year, including:

- a) the number of miles of sewers cleaned;
- b) the number of miles of sewers inspected;
- c) the number of Sewer Backups (Confirmed) for the year;
- d) the number of Unconfirmed Sewer Backups each year;
- e) a breakdown of the numbers/percentages of the causes of the backups (e.g. grease, debris, capacity, etc.);
- f) the number of recurring Sewer Backups (with recurring Sewer Backups meaning those segments with a Sewer Backup more than once every two years);
- g) the number of recurring dry weather Sewer Backups;
- h) the number of miles of sewer in the degreasing program;
- i) the number of Sewer Backup complaints;
- j) the number of Sewer Backups per 100 miles of sanitary/combined sewer by community district (community board), by council district, and by borough along with the number of miles of sanitary/combined sewer in each of the these;
- k) the number of discharges related to Sewer Backups that discharge to the MS4, to CSO outfalls during dry weather, or direct discharges;
- l) the status of major milestones in the O&M Plan, and;
- m) a written certification that Respondent is complying with the Order and complying with its O&M Plan.

Reporting Improvements

64. Respondent shall revise and update its reporting procedures to achieve the following:

- a) Ensure that during response activities for Sewer Backups, field personnel collect and transmit the appropriate and required information to their management;
- b) Ensure that Respondent’s management has the appropriate and required information needed to assess whether incidents meet the reporting criteria; and
- c) Properly report unauthorized discharges.

65. To meet these objectives, Respondent shall:

Within forty-five (45) days of receipt of this Order, modify the Sewer Backup Response Checklist (that is part of Standard Operating Procedure for Sewer Backup Response (FO-SOP-001.03-12) as follows:

IN THE MATTER OF:

The City of New York; and, The New York City Department of Environmental Protection CWA-02-2016-3012

- a. to include information on whether the Sewer Backups (both Confirmed Sewer Backups and Unconfirmed Sewer Backups) takes place in a combined or separately sewered area;
- b. to include information on whether the sewage from the Sewer Backup (both Confirmed Sewer Backups and Unconfirmed Sewer Backups) reaches the MS4 or a CSO outfall (during dry weather) or discharges to a CSO Outfall downstream of the regulator during any wet weather event or discharges directly to a Water of the United States;
- c. report all illicit or unauthorized discharges in accordance with the SPDES Permit, which references 6 NYCRR Part 750-2.7 requiring reporting of illicit or unauthorized discharges;
- d. develop and utilize specific codes for the Hansen database to document:
 - i. Sewer Backups that discharge to waters of the U.S. via the: MS4; a dry weather CSO discharge; or discharges to a Water of the U.S. directly; and
 - ii. Unconfirmed Sewer Backups that discharge to Waters of the United States via Respondent's MS4, including from CSO Outfalls during dry weather or are connected to a CSO outfall downstream of the regulator.
- e. Within thirty (30) days of the end of each Calendar Quarter (January to March, April to June, July to September, and October to December), Respondent shall submit to EPA the Hansen Database, electronically, containing records for that calendar quarter with the information requested in the above sub-paragraphs regarding ultimate destination of Sewage Backups.

GENERAL PROVISIONS

66. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. § 122.22, be sent by certified mail or its equivalent to:

Douglas McKenna., Chief
 Water Compliance Branch
 Division of Enforcement and Compliance Assistance
 290 Broadway, 20th Floor
 New York, NY 10007-1866

Joseph DiMura, P.E., Director
 Bureau of Water Compliance Programs
 Division of Water, NYSDEC
 625 Broadway
 Albany, NY 12233-3506

It shall be signed by an authorized representative of Respondent, and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the

best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

67. The Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer regarding the Requested Information or Ordered Provisions, with the EPA representative named above, in paragraph 66.
68. Respondent may seek federal judicial review of the CWA Section 309(a)(3) Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
69. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
70. Notice is hereby given that failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in your liability for civil penalties for each violation of up to \$37,500.00 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court may impose such penalties if the Court determines that you have violated the CWA as described above and failed to comply with the terms of the Compliance Order. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Compliance Order.
71. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
72. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: August 31, 2016

Signed: for Dore LaPosta - Bogus

Dore LaPosta, Director

Division of Enforcement and Compliance Assistance

