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File:
Save the Sound
N.Y. Intent to Sue



June 11, 2015

Via Certified First Class Mail

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U.S. Environmental Protection Agency
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Washington, DC 20460

Judith Enck, Regional Administrator
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Joseph Martens, Commissioner
New York State Department
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Robert Astorino, County Executive
Westchester County Executive
Michaelian Office Building
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Thomas J. Lauro, Commissioner
Department of Environmental Facilities
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New Rochelle, NY 10801

RE: Save the Sound Notice of Intent to Sue Westchester County for Violations of the Clean Water Act, 33 U.S.C § 1251-1387 - New Rochelle, Mamaroneck, Blind Brook, and Port Chester Sanitary Sewer Districts

Dear Administrator McCarthy, Regional Administrator Enck, Commissioner Martens, County Executive Astorino and Commissioner Lauro:

Connecticut Fund for the Environment, Inc. and its program Save the Sound (herein collectively "Save the Sound") submit this letter pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 ("Clean Water Act", "Act" or "CWA"), Section 505(b)(1)(A) of the Act, 33 U.S.C. § 1365(b)(1)(A), as notice of our intent to file a citizen suit against Westchester County for ongoing violations of the Act under Section 301(a), 33 U.S.C. § 1311(a), Section 402, 33 U.S.C. § 1342, and New York's Environmental Conservation Law ("ECL") Article 17, by discharging pollutants in violation of, or without, obtaining a permit in accordance with the CWA and the ECL Article 17, and violations of the terms of the Consent Order entered by and between Westchester County and the New York State Department of Environmental Conservation ("NYSDEC"), Case No. CO 3-20080730-65, on December 30, 2008 ("2008 Consent Order").

During the sixty-day notice period, we encourage you to continue discussion with us about effective remedies for the violations noted in this letter that would avoid the necessity of litigation. If you wish to pursue such discussions, please contact the undersigned immediately so that negotiations may be completed before the end of the sixty-day notice period.

I. Executive Summary

The notice letter is addressed solely to Westchester County and relevant regulatory authorities, but it involves conduct by the County and the municipalities of Harrison, Larchmont, Town of Mamaroneck, Mamaroneck Village, New Rochelle, North Castle, Pelham Manor, Port Chester, Rye, Rye Brook, Scarsdale and White Plains in failing to control excessive flow from inflow and infiltration from old leaking sewer pipes that feed the County trunk lines. The illegal excess flow overwhelms the County's sewage treatment infrastructure and regularly results in discharges of raw or partially treated sewage that pollute and contaminate Long Island Sound leading to contaminated water, closed beaches, closed shellfish beds and large dead zones where aquatic life cannot survive.

Specifically, the Notice of Intent to Sue alleges that the County violates the Clean Water Act by

- (1) Discharging partially treated sewage from the Flint Ave & Cherry Ave – SSO control facility in the New Rochelle Sewer District,
- (2) Failing to enforce the County Sewer Act to limit illegal levels of flow from municipalities in the New Rochelle, Mamaroneck, Blind Brook and Port Chester Sanitary Sewer Districts, and
- (3) Failing to implement state-mandated flow reduction requirements with municipalities in the New Rochelle, Mamaroneck, Blind Brook and Port Chester Sanitary Sewer Districts sufficient to end illegal sewage discharges.

The petition is prompted by the decades-long failure by the NYSDEC, Westchester County, and the Municipalities in the New Rochelle, Mamaroneck, Blind Brook, and Port Chester Sanitary Sewer Districts to effectively address sanitary sewage overflows and inflow and infiltration ("I/I") of stormwater and groundwater. When it rains the sewage collection system and treatment plants get overwhelmed and deluged by infiltration and inflow from old leaky sewage pipes and illegally connected roof leaders and sump pumps. Because the treatment plants and collection pipes can't handle the volume, raw sewage overflows from the pipes, often at manholes, and large volumes of wastewater is only partial treated at the plants before being discharged into the Sound and its tributaries. As a result, Long Island Sound is contaminated with pathogens and beaches and shellfish beds are regularly closed after big storms. In the water quality report card released this Monday, western Long Island Sound received a D+ grade. The families of Westchester deserve better.

Since 1998, Westchester County has been subject to various NYSDEC Consent Orders to ensure compliance with the Clean Water Act. Yet despite a lot of activity, many of the consent orders

and permit requirements remain unheeded and unenforced while others have proven manifestly insufficient to stop the problem.

This letter does not address nitrogen reductions that were required in these same sewage treatment plants by a bi-state and federal agreement reached in 2000 (A Total Maximum Daily Load Analysis to Achieve Water Quality Standards for Dissolved Oxygen in Long Island Sound or "TMDL") to reduce nitrogen in their plants by 58.5% by 2014. They were one of the only communities subject to that agreement that missed the deadline, requiring a three year extension to 2017.

During this period they were also required to address the flow (I/I) problems that are the subject of this notice letter. This problem was almost completely neglected for decades and as a result, there are still substantial investments that must be made. Band aids and temporary patches will no longer work or be acceptable, Westchester can, and must under law, address this ongoing a systematic public health, safety and environmental threat.

II. Introduction

Save the Sound intends to file a citizen suit under the CWA, Section 505(b)(1)(A) of the Act, seeking relief for Westchester County's discharge of pollutants into Long Island Sound and other violations of the Act. Save the Sound will seek civil penalties payable to the United States Treasury, injunctive relief, declaratory relief, and costs including attorney's fees. As required under the Act and Federal regulations at 40 CFR Part 135, Save the Sound is serving this notice on Westchester County's Executive and Westchester County's Commissioner of the Department of Environmental Facilities ("WCDEF"), the Commissioner of the NYSDEC, the Administrator of the Environmental Protection Agency ("EPA"), and the Regional Administrator of the EPA for the region in which such violations have occurred. 40 C.F.R. § 135.2(c).

This notice is prompted by the decades-long failure by the NYSDEC, Westchester County, and the Municipalities in the New Rochelle, Mamaroneck, Blind Brook, and Port Chester Sanitary Sewer Districts¹ to effectively address sanitary sewage overflows and inflow and infiltration ("I/I") in these Districts, which include the Long Island Sound Westchester County-owned-and-operated wastewater treatment plants (referred to collectively as the "WWTPs"). Due, in large part, to these direct and indirect discharges, Long Island Sound—one of Connecticut's, New York's and Westchester's most valuable natural assets—an impaired waterbody for decades, will continue to deteriorate unless immediate actions are undertaken by the NYSDEC, Westchester County, and the Municipalities, as well as other stakeholders including the Federal government and all the residents that benefit from this unique resource.

As a result of direct and indirect discharges of pollution and stormwater runoff, Long Island Sound is suffering low shellfish harvests, fish consumption advisories, periodic beach closures,

¹ See Table 3, Municipalities in the Long Island Sound Sanitary Sewer Districts.

limited recreational uses, low dissolved oxygen (hypoxia), pathogen contamination, toxic contamination, and floatable debris impacting recreation and aesthetics.

Since 1998, Westchester County has been subject to various NYSDEC Consent Orders to ensure compliance with the Act yet the requirements in those consent orders have not been incorporated into permits or fully enforced. As a result the levels of inflow and infiltration still remain well above regulatory standards and result in illegal sewage discharges. A 1998 Consent Order required repairs to the sanitary sewer systems tributary to the Westchester County WWTPs. Subsequently, the NYSDEC and Westchester County executed a Consent Order in 2004, revised in 2008, that required upgrades at three of the four WWTPs (New Rochelle, Mamaroneck and Port Chester) and the continued reduction of flows into the four WWTPs. According to the County, contract awards to comply with the improvements at the WWTPs total approximately \$223 million.² Notably, a portion of this amount was covered with federal stimulus funds under the American Recovery and Reinvestment Act of 2009.³ The 2008 Consent Order then mandated implementation of a Flow Reduction Strategy Plan (2015-2017) that is not being carried out under the approved schedule.⁴

To address the I/I problem, the County undertook the I/I Rehabilitation Program, conducted in 2000-2002, which removed between 4.8 and 8 million gallons day ("MGD") of infiltration (estimated at 18 MGD). The reduction is equivalent to 26.6% to 44.4% of the estimated infiltration level, thus not even half of the identified infiltration problem was addressed (using the County's higher figure). Moreover, the I/I Rehabilitation Program was developed based on I/I sources originally identified in the Sewer System Evaluations Surveys (SSES) completed in each of the four districts in 1993/94.⁵ Even in 2006, after the I/I Rehabilitation Program was concluded, the County admitted that "there is still a significant I/I problem within the collection system. In addition to the publicly owned collection systems, additional sources of I/I are [private sewer] laterals which connect to the system and basement sump pumps."⁶ In brief, the 2000-2002 I/I Rehabilitation Program was a step in the right direction, but inadequate.

² See County of Westchester, Quarterly Report No. 25, as required under Article VI of the Consent Order, Case No. 3-20080730 ("Westchester, Quarterly Report No. 25), pp. 7, 8, 9 & 12, available at <http://environment.westchestergov.com/images/stories/qtrly/BNR25thQtrlyReportCoverLtr.pdf>.

³ See http://www.nysefc.org/Portals/0/Doc_Library/CW%20ARRA%20Fact%20Sheets/Westchester%20County.pdf

⁴ NYSDEC, Order on Consent, Case No. CO 3-20080730-65 ("NYSDEC, 2008 Consent Order") (Exhibit 1). See NYSDEC, 2008 Consent Order, Appendix A, Item 18: "Develop a flow reduction strategy", Submission date October 1, 2012.

⁵ Westchester County I/I Rehabilitation Program Report, p. ES-1 (emphasis supplied).

⁶ Pursuant to a Consent Order executed between the NYSDEC and the County on August 17, 1998. See Westchester County, Department of Environmental Facilities, Department of Public Works, Inflow/Infiltration Rehabilitation Program Effectiveness Evaluation Report (2003) (herein "Westchester County I/I Rehabilitation Program Report"), pp. 4-5, 4-6; Westchester County, New York, Department of Environmental Facilities, Department of Public Works, New Rochelle Flow Reduction Study (December 2005, Revised April 2006) (herein "New Rochelle Flow Reduction Study") p. ES-3, ES-4.

According to the County's most current assessment—submitted in 2013 and approved by the NYSDEC—"I/I in the Westchester County Sewer Districts is a significant problem, contributing up to 50% of the flow to the WWTPs. It is to be expected that the aging sewer systems will continue to deteriorate and I/I will continue to increase."⁷ The County also acknowledges that I/I has significant impacts on both the sewage collection system and the WWTPs including:⁸

- decreased conveyance capacity in the piping system resulting in less capacity available for new development;
- backups in and overflows from the sewer system;
- increased pumping costs;
- increased capital costs and operation and maintenance costs (O&M) at the WWTPs, and
- decreased treatment capability at the WWTPs, particularly at the new nitrogen facilities, possibly requiring additional capital expenditures.

The 2013 assessment included a Flow Reduction Strategy Plan⁹ with a schedule for compliance, calling for implementation of the plan beginning September 1, 2015 thru 2017.¹⁰ In order to get there, however, the County had to (1) complete negotiations with the municipalities by July 1, 2014 on the repair and rehabilitation work to be undertaken, and (2) review of the submission and municipalities' work proposal between April 1, 2015 and August 31, 2015. By its own admission, the County has failed to meet milestones (1) and (2), and therefore will be unable to begin implementation of (3) the programs on September 1, 2015. To be sure, on April 30, 2015, the County acknowledged that negotiations with the municipalities were still ongoing and had only reached a "tentative agreement with the four municipalities within the New Rochelle Sewer District to take action to identify and reduce excess inflow and infiltration..."¹¹

The County also admits that "[t]he County's NYSDEC issued SPDES Permit for each sewage treatment plant, including the four Long Island Sound Treatment Plant, requires the County to

⁷ See Westchester County, New York, Department of Environmental Facilities, Department of Public Works and Transportation, Long Island Sound, Sanitary Sewage Districts, Flow Monitoring Program Report (September 2012, Revised June 2013) (herein "Westchester County, Flow Monitoring Program Report") pp. See Westchester County, Flow Monitoring Program Report, pp. ES-1 & ES-10, available at http://environment.westchestergov.com/images/stories/qtrly/BNR18thQ_SubmLctrLISFlowMonReptRev.pdf.

⁸ Westchester County, Flow Monitoring Program Report, Figures ES-1 & 8-1.

⁹ See NYSDEC, 2008 Consent Order, Appendix A, Item 18: "Develop a flow reduction strategy", Submission date October 1, 2012.

¹⁰ See Westchester County, Flow Monitoring Program Report, ES-9, ES-10, Figure ES-2, 10-2, 10-3, Figure 10-1.

¹¹ Westchester, Quarterly Report No. 25), p. 7.

enforce the County Sewer Act requirements to remove excessive inflow and infiltration.”¹² In particular, the County Sewer Act prohibits the introduction by municipalities of excessive inflow and infiltration—more than 150 gallons per capita per day—into the county trunk sewer system.¹³ A municipality shall be held liable under the Sewer Act for the violation of introducing excessive infiltration and/or inflow into the county trunk sewer system at each connection to the county trunk sewer system.¹⁴ Further, the County must require that the municipalities make any repairs to tributary sewer systems within their borders to insure compliance with any federal or State law, regulation or permit governing the operation of a county WWTP that services a municipality,¹⁵ and to annually file copies of all plans for such maintenance and repair program by September first of each year.¹⁶ The County Sewer Act remains unforced, however.

In addition, the County has failed to eliminate discharges from the sanitary sewage overflow control facilities (also termed Overflow Retention Facilities, “ORFs”) in the New Rochelle Sanitary Sewer District by August 1, 2014—a condition imposed by the NYSDEC back in 2002.¹⁷ Specifically, on December 9th and 10th of 2014, Westchester County discharged partially treated sewage into Long Island Sound from the Flint Ave & Cherry Ave - SSO Control Facility (Outfall No. 3). Notably, the County has been well aware of this prohibition for over 13 years but has taken inadequate affirmative steps to eliminate these ORF discharges, and thus violations will continue in the future.

In sum, while the County was forced to invest \$223 million in upgrades at the WWTPs and has made certain repairs and rehabilitation to its sewer truck system, and the Municipalities have also undertaken some repairs and rehabilitation of their tributary sewage collection systems and begun to address stormwater runoff, the Sound continues with “impaired” designation for not meeting water quality standards, or supporting beneficial uses such as fish and shellfish habitat and primary water contact recreation. Historically one of the most productive estuaries in the nation, as a result of direct and indirect pollution discharges and stormwater runoff, the Sound now suffers low shellfish harvests, fish consumption advisories, periodic beach closures, limited recreational uses, low dissolved oxygen (hypoxia), pathogen contamination, toxic contamination, and floatable debris impacting recreation and aesthetics.¹⁸ Despite the overall problem being a

¹² See Letter by WCDEF to the Municipalities in the New Rochelle, Port Port Chester, Blind Brook and Mamaroneck Sanitary Sewer Districts, dated April 1, 2014 (“WCDEF Letter, April 1, 2014”) (attached hereto as Exhibit 6). See also Letter by WCDEF to the Municipalities in the New Rochelle Sanitary Sewer District, dated January 7, 2014, p. 1 (“WCDEF Letter, January 7, 2014”) (attached hereto as Exhibit 7).

¹³ Westchester County Administrative Code, Section 824.72(2).

¹⁴ Westchester County Administrative Code, Section 824.72(1).

¹⁵ Westchester County Administrative Code, Section 824.72(5).

¹⁶ Westchester County Administrative Code, Section 824.72(7).

¹⁷ WCDEF Letter, January 7, 2014, pp. 1 & 2.

¹⁸ See http://www.dec.ny.gov/docs/water_pdf/wiatllishrmr.pdf; http://www.dec.ny.gov/docs/water_pdf/pwllalisllvlasmt.pdf.

multi-party failure by the NYSDEC, Westchester County, and the Municipalities, the County's non-compliance with the Act contributes significantly to this endemic pollution problem.

As more fully set forth below, the County is failing to comply with the CWA by illegally discharging from an overflow retention facility in the New Rochelle Sanitary Sewer District in violation of their permit, failing to enforce the County Sewer Act in all the sewer districts in violations of their permits, and failing to implement the flow reduction measures required under the 2008 Consent Order.

III. Background

*The Long Island Sound is easily one of Westchester's most valuable natural assets. It is beautiful, lined by the most coveted homes and office buildings, and it generates an estimated \$5.5 billion per year from boating, fishing, swimming and sight-seeing.*¹⁹

The Long Island Sound is an estuary, bounded by the State of Connecticut and Westchester County, New York, to the north and Long Island to the south.²⁰ The Sound—situated in one of the most densely populated regions of the United States—is a valuable resource to the Region, providing both recreational and commercial uses. The Long Island Sound watershed in Westchester County comprises approximately 68,000 acres and supports approximately one-half of the county's population.²¹

Congress enacted the Clean Water Act in 1972 to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” CWA Section 101(a), 33 U.S.C. § 1251(a). In furtherance of this goal, the Act provides a comprehensive approach for the regulation of pollution discharged into the waters of the United States. As such, the CWA has regulated pollution discharges into the Sound for over forty years, and has required periodic monitoring of the Sound's water quality. In 1987, the Long Island Sound was designated an “Estuary of National Significance” pursuant to 33 U.S.C § 1330. Despite the regulatory programs under the Act and the federal estuary designation, there are a number of water quality issues that impact the Sound, such as high nitrogen loading, low dissolved oxygen (hypoxia), pathogen contamination, toxic contamination, and floatable debris.

¹⁹ Long Island Sound Watershed Intermunicipal Council, Feasibility Evaluation of a Regional Stormwater Management District (August 2007) (“LISWIC Study”), pp. ES-1, 1-1 (emphasis supplied), <http://www.scarsdale.com/Portals/0/Regional%20Stormwater%20Management%20District.pdf>.

²⁰ LISWIC Study, pp. ES-1, 1-1.

²¹ LISWIC Study, pp. ES-1, 1-1.

Sewage is among the pollutants covered under the CWA, and publicly owned sewage systems and treatment plants are among the “point sources” regulated pursuant to the Act. The NYSDEC, through a partnership agreement with the EPA, administers the CWA’s programs in New York State. Westchester County owns and operates sewer systems, including the WWTPs, that discharge into Long Island Sound, which are regulated under the Act and NYSDEC regulations to implement the Act.

The Act also requires that the NYSDEC periodically assess and report on the quality of waters in New York State. Section 303(d) of the Act, 33 U.S.C. § 1313(d), further requires NYSDEC to identify “impaired waters”, where specific designated uses are not fully supported. For these “impaired waters,” NYSDEC must consider the development of a Total Maximum Daily Load (“TMDL”) or other strategy to reduce the input of the specific pollutant(s) that restrict waterbody uses, in order to restore and protect such uses. In September 2014, New York State updated its Section 303(d) List of Impaired Waters Requiring a TMDL/Other Strategy. In Table 1 below is the New York State 2014 Section 303(d) List of Impaired/TMDL Waters for the Westchester Long Island Sound area.²²

²² http://www.dec.ny.gov/docs/water_pdf/303dlistfinal2014.pdf.

Table 1 - New York State 2014 CWA Section 303(d) List of Impaired/TMDL Waters for the Westchester's Long Island Sound area²³

Waterbody Name	County	Type	Class	Cause/ Pollutant	Source	Year
Larchmont Harbor	Westchester	Estuary	SB	Floatables	Urb/Storm, Municipl	2002
Larchmont Harbor	Westchester	Estuary	SB	Pathogens	Urb/Storm, Municipl	2002
Mamaron-eck Harbor	Westchester	Estuary	SB	Floatables	Urb/Storm, Municipl	2002
Mamaron-eck Harbor	Westchester	Estuary	SB	Pathogens	Urb/Storm, Municipl	2002
Port Chester Harbor	Westchester	Estuary	SB	Floatables	Urb/Storm, Municipl	2002
Port Chester Harbor	Westchester	Estuary	SB	Pathogens	Urb/Storm, Municipl	2002

As noted, by definition, the Section 303(d) List is to be comprised of impaired waters that require development of a TMDL plan, thus Not all impaired waters of the State are included on the Section 303(d) List. In Table 2 below is the New York State 2014 Impaired Waters NOT Included on the Section 303(d) List for the Westchester's Long Island Sound area.²⁴ This compilation of waterbody/pollutants provides additional information toward understanding listing decisions and clarifies how impairments are considered.²⁵

²³ 6 NYCRR § 701.11 Class SB saline surface waters: The best usages of Class SB waters are primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish, and wildlife propagation and survival.

²⁴ See http://www.dec.ny.gov/docs/water_pdf/303dnotlisted2014.pdf.

²⁵ There are three (3) categories/justifications for not including an impaired water of the List: TMDL development is not necessary because a TMDL has already been established for the segment/pollutant; TMDL is not necessary because other required control measures are expected to result in restoration in a reasonable period of time; and TMDL is not appropriate because the sole impairment is the result of pollution, rather than a pollutant that can be allocated through a TMDL. See http://www.dec.ny.gov/docs/water_pdf/303dnotlisted2014.pdf.

Table 2 - New York State 2014 Impaired Waters NOT Included on the CWA Section 303(d) List for the Westchester's Long Island Sound area²⁶

Waterbody Name	County	Type	Class	Cause/ Pollutant	Source	Year
Long Island Sound, Westchester Co Waters	Westchester	Estuary	SA	Oxygen Demand	Municipal, Urb,CSOs	2000
Long Island Sound, Westchester Co Waters	Westchester	Estuary	SA	Nitrogen	Municipal, Urb,CSOs	2000
New Rochelle Harbor	Westchester	Estuary	SA	Floatables	CSOs, Urban/ Storm	2010

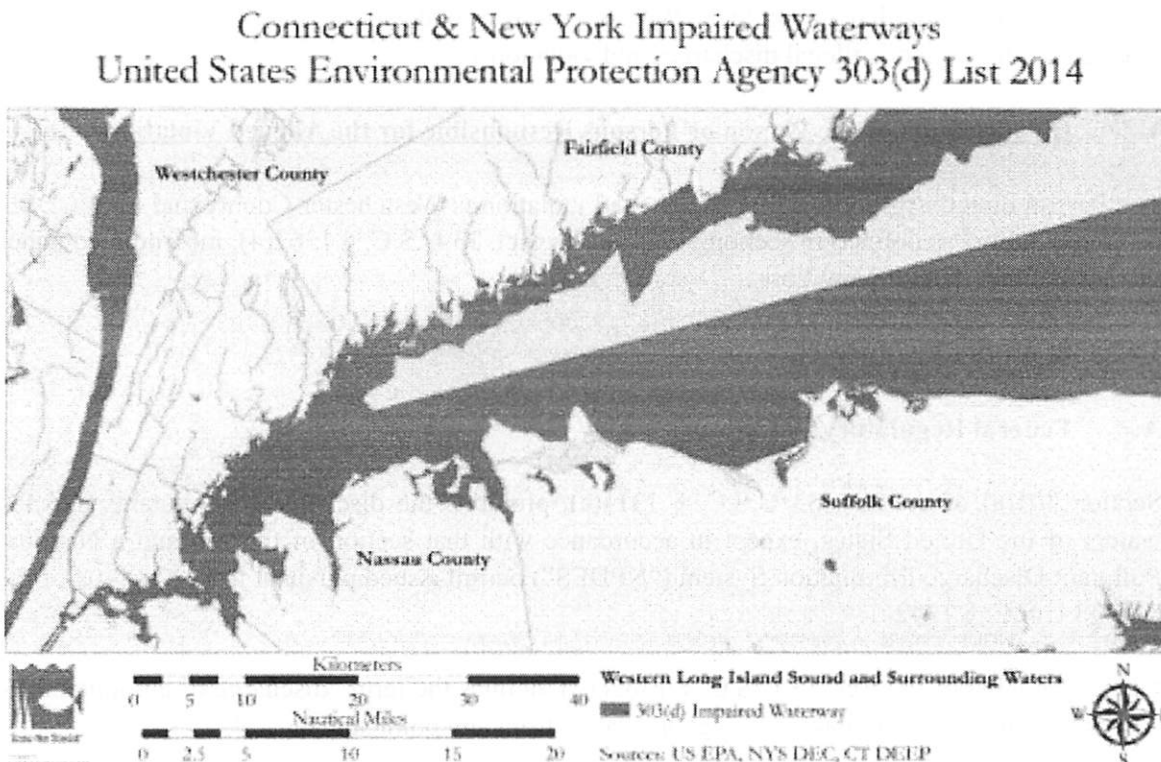
In brief, as noted above, as a result of direct and indirect discharges of pollution and stormwater runoff, Long Island Sound is suffering low shellfish harvests, fish consumption advisories, periodic beach closures, limited recreational uses, low dissolved oxygen (hypoxia), pathogen contamination, toxic contamination, and floatable debris impacting recreation and aesthetics.²⁷

Figure 1 below shows Connecticut and New York Impaired Waterways CWA 303(d) List 2014.

²⁶ 6 NYCRR §701.10 Class SA saline surface waters: The best usages of Class SA waters are shellfishing for market purposes, primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish, and wildlife propagation and survival.

²⁷ See http://www.dec.ny.gov/docs/water_pdf/wiatllishmr.pdf; http://www.dec.ny.gov/docs/water_pdf/pwllisllvlasmt.pdf.

Figure 1 - Connecticut and New York Impaired Waterways CWA 303(d) List 2014



IV. Identification of the Party Giving Notice

Save the Sound is a not-for-profit membership corporation whose primary purpose is to conserve and enhance the biological integrity of Connecticut's and New York's air, land, and water resources, including Long Island Sound. Save the Sound use legal and scientific expertise, advocacy, and education in furtherance of its purpose to achieve results that benefit the environment for current and future generations. Many of Save the Sound's members live on or near Long Island Sound, and enjoy, or recreate in these waters for a number of activities, including but not limited to fishing and boating, swimming, and birdwatching. Save the Sound's members share a common concern about the quality of the Long Island Sound and surroundings. Save the Sound is a "citizen" for purposes of Section 505 of the Act, 33 U.S.C. § 1365. Save the Sound make this notice on behalf of itself and its members.

The quality of Long Island Sound and surrounding areas directly affects the health, recreational, aesthetic, commercial, and environmental interests of Save the Sound's members. The acts and omissions noticed herein cause or contribute to pollution levels in waters used and enjoyed by Save the Sound members because they are injurious to human health, wildlife, the aesthetic quality of those waters, and to uses pursued and enjoyed by Save the Sound members. The acts and omissions noticed herein threaten the health and welfare of Save the Sound members, impair

and threaten their use and enjoyment of the above mentioned waters, deny them the level of water quality to which they are entitled under the CWA, and deprive them of procedural rights and protections provided under the CWA. Save the Sound has an interest that is adversely affected by the County's illegal discharges and violations.

V. Identification of the Person or Persons Responsible for the Alleged Violation

The Person directly responsible for the alleged violation is Westchester County and its WCDEF, a "municipality" as defined in section 502(4) of the Act, 33 U.S.C. § 1362(4), incorporated under the laws of the State of New York.

VI. Statutory Framework

A. Federal Regulatory Framework

Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into the waters of the United States, except in accordance with that section of the Act and a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source"

Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines the term "pollutant" to include solid waste, sewage, chemical wastes, and biological materials.

Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines the term "navigable waters" as the waters of the United States, including its territorial seas.

Part 122 of Title 40 of the Code of Federal Regulations, promulgated under the Act to regulate the NPDES permit program, defines "waters of the United States" to include, in relevant part, "[a]ll 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," and tributaries to such waters. 40 C.F.R. § 122.2(a) and (e).

Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term "point source" as any discernible, confined and discrete conveyance including, *inter alia*, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

Section 502(11) of the Act, 33 U.S.C. § 1362(11), defines the term "effluent limitation" as "any restriction established by a State or the Administrator on quantities, rates, and concentrations of

chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters”

Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

Permittees have an obligation to properly operate and maintain their facilities in compliance with the Act. See 40 C.F.R. Part 122.41(e).

The citizen suit provision of the Act, section 505(a)(1)(A), 33 U.S.C. § 1365(a)(1)(A), authorizes any citizen to commence a civil action against any person alleged to be in violation of “an effluent standard or limitation” or an order issued by the EPA or a State with respect to such a standard or limitation.”

Section 505(f), 33 U.S.C. § 1365(f), defines—for purposes of section 505—the term “effluent standard or limitation” to mean: “(1) effective July 1, 1973, an unlawful act under subsection (a) of section 301 of this Act; (2) an effluent limitation or other limitation under section 301 or 302 of this Act; (3) standard or performance under section 306 of this act; (4) prohibition, effluent standard or pretreatment standards under section 307 of this Act; (5) certification under section 401 of this Act; [or] (6) a permit or condition thereof issued under section 402 of this Act, which is in effect under this Act (including a requirement applicable by reason of section 313 of this Act); or (7) a regulation under section 405(d) of this Act.”

Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the Act, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, shall be subject to a civil penalty of up to \$25,000 per day for each violation occurring prior to January 31, 1997, up to \$27,500 per day for each violation occurring on or after January 31, 1997, up to \$32,500 per day for each violation after March 15, 2004, and up to \$37,500 per day for each violation after January 12, 2009, pursuant to 40 C.F.R. § 19.

Under Section 402(a) of the Act, 33 U.S.C. § 1342(a), the Administrator of EPA may issue NPDES permits to authorize the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such permits.

Section 402(b) of the Act, 33 U.S.C. § 1342(b), authorizes EPA to delegate permitting and inspection authority to states meeting certain requirements.

The NYSDEC is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, termed the State Pollutant Discharge Elimination System (“SPDES”) permit program.

B. State Regulatory Framework

The NYSDEC has jurisdiction to protect the waters of the State pursuant to the ECL,²⁸ Article 17, and the State's SPDES permit program.

ECL § 17-0511 states that "the use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article." Thus, it is a violation of the ECL Article 17 to discharge pollutants without obtaining a permit in accordance with CWA Section 402, 33 U.S.C. § 1342, or the ECL Article 17.

ECL § 71-1929 provides that any person who violates any provision of Titles 1 through 11 inclusive and title 19 of Article 17 of the ECL or any rule or regulation, order or determination of the NYSDEC Commissioner promulgated thereunder shall be liable for a civil penalty of up to thirty seven thousand five hundred dollars (\$37,500). Injunctive relief is also available.

New York State has issued regulations, under 6 NYCRR Part 750 that provide for "Obtaining A SPDES Permit"²⁹ and "Operating In Accordance With A SPDES Permit."³⁰

6 NYCRR § 750-1.2(17) defines the term "bypass" to mean "the intentional or unintentional diversion of wastewater or stormwater around any portion of a treatment facility having the effect of reducing the degree of treatment designed for the bypassed portion of the treatment facility."

6 NYCRR § 750-1.2(26) defines the term "discharge" to mean "any addition of any pollutant to waters of the State through an outlet or point source."

6 NYCRR § 750-1.2(28) defines the term "Discharge Monitoring Report (DMR)" to mean "a report submitted by a permittee to the department summarizing the effluent monitoring results obtained by the permittee over periods of time as specified in the SPDES permit."

6 NYCRR § 750-1.2(45) defines the term "infiltration" to mean "water other than wastewater that enters a sewerage system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include and is distinguished from inflow."

²⁸ See Chapter 43-B of the Consolidated Laws of the State of New York.

²⁹ 6 NYCRR Subpart 750-01.

³⁰ 6 NYCRR Subpart 750-02.

6 NYCRR § 750-1.2(46) defines the term “inflow” to mean “water other than wastewater that enters a sewerage system (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers, process and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, street washwaters, or drainage. Inflow does not include, and is distinguished from infiltration.”

6 NYCRR § 750-1.2(51) defines the term “Municipality” to mean “any county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof.”

6 NYCRR § 750-1.2(52) defines the term “Municipal Sewage” to mean “wastewater composed primarily of discharges of sanitary sewage from residences, primarily from facilities not owned by a municipality, with or without the admixture of industrial wastewater.”

6 NYCRR § 750-1.2(58) defines the term “outfall” to mean “the terminus of a sewer system, or the point of emergence of any waterborne sewage, industrial waste or other wastes or the effluent therefrom, into the waters of the state.”

6 NYCRR § 750-1.2(59) defines the term “outlet” to mean outfall.

6 NYCRR § 750-1.2(61) defines the term “partially treated” to mean “receiving some level of treatment, but not enough treatment to meet all effluent limits.”

6 NYCRR § 750-1.2(63) defines the term “permittee” to mean “the holder of a SPDES permit.”

6 NYCRR § 750-1.2(64) defines the term “person or persons” to mean “any individual, public or private corporation, political subdivision, government agency, municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever.”

6 NYCRR § 750-1.2(68) defines the term “Publicly owned treatment works (POTW)” to mean “any device or system used in the treatment (including recycling and reclamation) of municipal sewage that is owned by a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.”

6 NYCRR § 750-1.2(77) defines the term “sewage” to mean “the water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present.”

6 NYCRR § 750-1.2(78) defines the term “Sewage Treatment Works” to mean “a facility for the purpose of treating, neutralizing or stabilizing sewage, including treatment or disposal plants, the necessary collection, intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.”

6 NYCRR § 750-1.2(81) defines the term “Sewer system” to mean “pipe lines or conduits, pumping stations, force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting storm water, sewage, industrial waste or other wastes, alone or in combination to a disposal system.”

6 NYCRR § 750-1.2(94) defines the term “upset” to mean “an exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, failure to properly monitor the system or careless or improper operation.”

6 NYCRR § 750-1.2(95) defines the term “wastewater” to mean “water that is not stormwater, is contaminated with pollutants and is or will be discarded.”

Under 6 NYCRR § 750-2.7, a bypass, an upset or any other sewage-related incident shall be reported orally within two hours of becoming aware of the discharge, for discharges of untreated or partially treated sewage that would affect bathing areas during the bathing season or shellfishing, and within 24 hours for all areas. A written report of a bypass, upset or other sewage-related incidents shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. In addition, this provision calls for a duty to mitigate: “The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit, which has a reasonable likelihood of adversely affecting human health or the environment.”

Under 6 NYCRR § 750-2.9, Additional Conditions Applicable to a Publicly Owned Treatment Works, a POTW has an obligation to “enact, maintain and enforce or cause to be enacted, maintained and enforced up-to-date and effective sewer use law in all parts of the POTW service area. Such enactment and enforcement shall include intermunicipal 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.”³¹

³¹ 6 NYCRR § 750-2.9(4).

C. Westchester County's Regulatory Framework

Westchester County's sewer use law is the County's Environmental Facilities Sewer Act ("County Sewer Act").³² The purposes of the County Sewer Act are specifically stated, as follows:³³

- (1) To prohibit excessive volumes and/or inordinate rates of flow of sewage and wastes into the county trunk sewer system and all tributary sewer systems.
- (2) To address problems of inflow and infiltration from the tributary systems by compelling municipalities to fix and maintain the tributary sewer systems within their borders and to take immediate action to reduce extraneous flows of water due to infiltration, illegal inflow and illegal stormwater connections to tributary sewer systems within a municipality's borders which are adversely impacting upon many County POTW treatment plants in their ability to treat waste, comply with their State Pollution Discharge Elimination System permits (SPDES permits), and to protect and enhance the local environment. ...
- (4) To prohibit the contribution of sewage, industrial wastes or other wastes which may cause maintenance difficulties in the trunk sewers, force mains, pumping stations, sewage regulators and other structures and appurtenances to the county system and tributary sewer systems.
- (5) To prohibit the contribution of sewage, industrial wastes or other wastes which may create operating difficulties at the POTW treatment plants as they now exist or may be constructed, modified or improved in the future.
- (6) To prohibit and/or to regulate the contribution of sewage, industrial wastes or other wastes which require for treatment at the plants, greater expenditures than are required for equal volumes of normal sewage. ...
- (8) To set forth uniform requirements for direct and indirect contribution into the POTW's. ...

The County Sewer Act § 824.11(15), defines "County sewer district" to mean "any county sanitary sewer district as created, altered or modified by action of the Westchester County Board of Legislators."

³² Westchester County Administrative Code, Chapter 824.

³³ Westchester County Administrative Code, Section 824.11.

The County Sewer Act § 824.11(16), "County trunk sewer system" to mean "the trunk sewers, force mains, pumping stations, sewage regulators, POTW's and other appurtenant structures owned and operated by the County of Westchester."

The County Sewer Act § 824.11(23), defines "excessive infiltration and inflow" to mean "the quantity of flow entering the county sewer system which is greater than the limit set forth in section 824.72 of this chapter."

The County Sewer Act § 824.11(28), defines "illegal connection" to mean "any connection to a sanitary sewer, other than an existing combined sewer in the City of Yonkers, which permits the introduction of anything other than sewage or wastewater into the tributary sewer systems or county trunk sewer system."

The County Sewer Act § 824.11(33), defines "infiltration" to mean "water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, inflow."

The County Sewer Act § 824.11(34), defines "inflow" to mean "water other than wastewater that enters a sewer system (including sewer service connections) from sources such as but not limited to, roof leaders, sump pumps, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration."

The County Sewer Act § 824.11(48), defines "Publicly owned treatment works or POTW" to mean "a treatment works, as herein defined, which is owned and/or operated by Westchester County."

The County Sewer Act § 824.11(49), defines "POTW treatment plant" to mean "that portion of the POTW which is designated to provide treatment (including recycling and reclamation) of municipal sewage and industrial wastewater."

The County Sewer Act § 824.11(54), defines "sanitary sewage" to mean "sewage discharging from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories or institutions and free from stormwater, surface water, industrial wastes and other wastes."

The County Sewer Act § 824.11(55), defines "sanitary sewer" to mean "a sewer intended to carry only sanitary or sanitary and industrial wastewaters from residences, commercial buildings, industrial plants and institutions and to which storm-, surface and ground waters are not

intentionally admitted through either direct or indirect connection or lack of maintenance or neglect.”

The County Sewer Act § 824.11(57), defines “sewage” to mean “a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground-, surface and stormwater as may be inadvertently present. The admixture of sewage above defined with industrial wastes or other wastes also shall be considered ‘sewage’ within the meaning of this definition.”

The County Sewer Act § 824.11(58), defines “sewage treatment plant (water pollution control plant)” to mean “a POTW treatment plant as herein defined.”

The County Sewer Act § 824.11(59), defines “sewer” to mean “a pipe or conduit for carrying sewage.”

The County Sewer Act § 824.11(60), defines “sewage system” to mean “all facilities for collecting, regulating, pumping and transporting sewage to and away from the POTW treatment plant.”

The County Sewer Act § 824.11(68), defines “storm sewer or storm drain” to “mean a sewer intended to carry only stormwaters, surface runoff, street wash waters and drainage but excluding industrial wastewater other than cooling waters and unpolluted waters.”

The County Sewer Act § 824.11(69), defines “stormwater” to mean “any flow occurring during or following any form of natural precipitation and resulting therefrom.”

The County Sewer Act § 824.11(76), defines “tributary sewer systems” mean “sanitary sewer systems which collect and feed wastewater into the county trunk sewer system, whether owned by a municipality or person, which serves more than one lot.”

The County Sewer Act § 824.11(79), defines “wastewater” shall mean the liquid and water-carried industrial or domestic wastes from dwellings, business buildings, industrial facilities and institutions, whether treated or untreated, which is contributed into or permitted to enter the POTW.

The County Sewer Act § 824.41(2), among the “limitation of use” provisions, includes the following general prohibition: “Municipalities using the county trunk sewers are prohibited from allowing stormwater and groundwater to enter the tributary sewer systems within their borders through excessive infiltration, inflow and by illegal connections from home, business or other property owners made to the tributary sewer systems within their borders, except for those presently legal combined sewer systems which shall be permitted only to discharge stormwater

collected through legal stormwater drains, but who shall similarly be prohibited from discharging excessive infiltration, inflow from other sources and illegal connections.”³⁴

The County Sewer Act § 824.71(2) further requires that “[w]ithin any area served by a separate sanitary sewer system, no stormwater shall be allowed to enter soil, water or vent pipes from any building including extraneous flows due to inflow and infiltration. Within any such area, no down-spout or leader, gutter or other pipe, drain or channel, which may at any time carry stormwater surface drainage derived from hydraulic pressure or from well points, cooling water or sea water, shall be connected with any sanitary sewer. Every joint in the connection to a sanitary sewer shall be made watertight so that no leakage into or from such connection shall occur.”³⁵

Notably, the County Sewer Act § 824.72, includes a specific “[p]rohibition of introduction by municipalities of excessive inflow and infiltration into the county trunk sewer system,” and sets forth the following standards, monitoring obligations, and penalties:

(1) A municipality within the jurisdiction of the County of Westchester shall be held liable and subject to a civil penalty after an administrative hearing in accordance with sections 824.74, 824.75, 824.76, 824.77, 824.78 and 824.79 for the violation of introducing excessive infiltration and/or inflow into the county trunk sewer system at each connection to the county trunk sewer system.³⁶

(2) Excessive infiltration and inflow means the quantity of flow entering the county sewer system which is greater than 150 gallons per capita per day for the population served by the tributary sewer systems located within a municipality's borders.³⁷ ...

(5) Municipalities shall be required to make any repairs to tributary sewer systems within their borders that are specifically directed by the Commissioner of Environmental Facilities, as may be required by him to insure compliance with any federal or State law, regulation or permit governing the operation of a county POTW that services a municipality.³⁸

(6) Municipalities shall have a separate and distinct obligation to take immediate action to discover any illegal connections to the tributary sewer systems within their borders and to take immediate action to insure that such illegal connections are disconnected. Municipalities shall

³⁴ Westchester County Administrative Code, Section 824.41(2).

³⁵ Westchester County Administrative Code, Section 824.71(2).

³⁶ Westchester County Administrative Code, Section 824.72(1).

³⁷ Westchester County Administrative Code, Section 824.72(2).

³⁸ Westchester County Administrative Code, Section 824.72(5).

also undertake a program to insure that illegal connections are not reconnected in the future and that no new illegal connections are made to the sanitary sewers.³⁹

(7) Municipalities shall have a continuing obligation to maintain and repair the tributary sewer systems within their borders such that they comply with the standards set forth in this section and shall annually file copies of all plans for such maintenance and repair program with the Commissioner of Environmental Facilities by September first of each year.⁴⁰

(8) Failure by a municipality to comply with any of the prohibitions, standards and/or requirements set forth in this Section shall constitute a separate violation for each and every day of noncompliance and may subject a municipality to penalties set forth in section 824.77.⁴¹

Finally, the provision on “[p]enalties for violation of prohibitions against the introduction of groundwater, stormwater and excessive inflow and infiltration; enforcement” states, as follows:

(1) It shall be a civil violation of this law to violate any of the provisions of sections 824.41 2.; 824.61; 824.71 and 824.72. Any person or municipality which violates these provisions of this chapter or any rule, regulation or standard promulgated thereto, or any order, except an order directing such person or municipality to pay a penalty by a specified date issued by the commissioner pursuant thereto, shall be subject to a penalty of not to exceed \$25,000.00 per day for each violation. It shall be a separate violation under this section for each day that each violation may continue. If a municipality or person has been found to be liable, pursuant to this chapter, for three separate violations, it shall be subject to a maximum penalty of not to exceed \$50,000.00 per day for each violation, upon its being found liable for the fourth, fifth or sixth violation. For each additional group of three subsequent violations, the maximum penalty shall continue to double (e.g. for violations seven through nine—a penalty of not to exceed \$100,000.00). In no event shall a maximum penalty for any single violation exceed \$200,000.00 per day. In addition, such person or municipality may be enjoined from continuing such violation. In any action for injunction brought pursuant hereto, any finding of the commissioner or his or her duly appointed hearing officer shall be prima facie evidence of the fact(s) found therein.

(2) Penalties may be sued for and recovered by the county in any court of competent jurisdiction or they may be assessed by order of the commissioner pursuant to his or her authority under section 824.74 1. of this law.⁴²

³⁹ Westchester County Administrative Code, Section 824.72(6).

⁴⁰ Westchester County Administrative Code, Section 824.72(7).

⁴¹ Westchester County Administrative Code, Section 824.72(8).

⁴² Westchester County Administrative Code, Section 824.77(1)&(2). Section 824.74 provides “Authority of commissioner; administrative enforcement process; notice of violation; formal hearings.”

VII. Factual Background

Westchester County's New Rochelle, Mamaroneck, Blind Brook, and Port Chester Sanitary Sewer Districts, including the County trunk (collection) sewer system, the WWTPs, the Sanitary Sewage Overflow Control Facilities and the Pump Stations are depicted in the Map of Westchester County Sewer Districts and Facilities (2015).⁴³

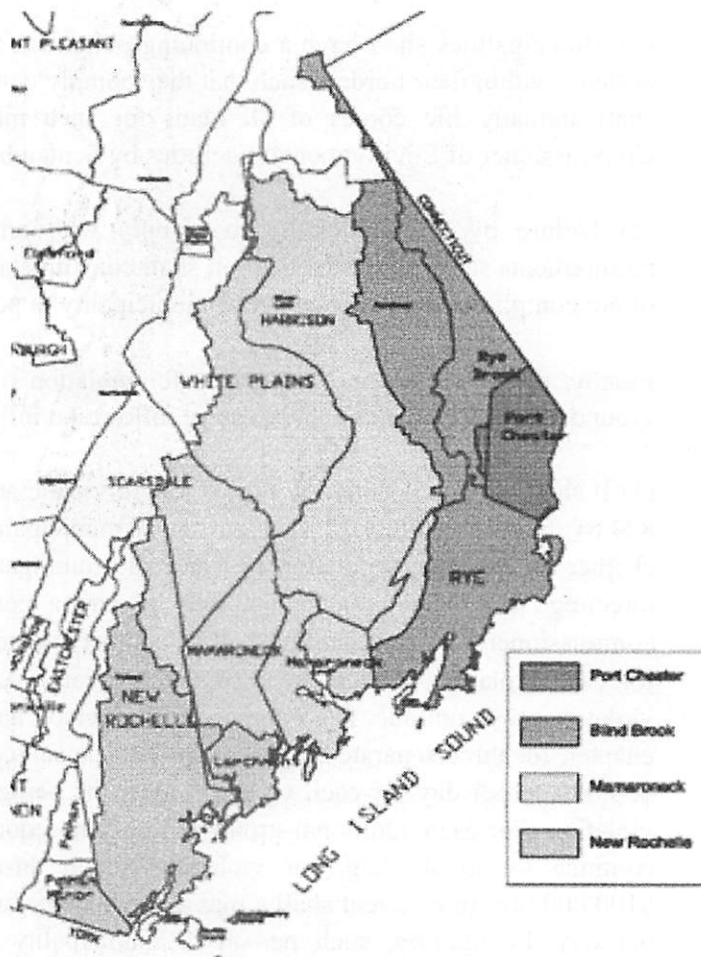
The Westchester County's Long Island Sound Sewer Districts are show in Figure 2 in the right.

The New Rochelle Sanitary Sewer District's area is depicted in orange.

The Mamaroneck Sanitary Sewer District's area is depicted in green.

The Blind Brook Sanitary Sewer District's area is depicted in purple.

The Port Chester Sanitary Sewer District's area is depicted in brown.



The New Rochelle Sanitary Sewer District collects and treats wastewater from four municipalities: the City of New Rochelle, the Town of Mamaroneck, the Village of Larchmont, and the Village of Pelham Manor.

The Mamaroneck Sanitary Sewer District serves the following municipalities: City of New Rochelle, City of Rye, City of White Plains, Town/Village of Harrison, the Town of Mamaroneck, Village of Mamaroneck, and the Village of Scarsdale

The Blind Brook Sanitary Sewer District serves the following municipalities: the City of Rye, the Town/Village of Harrison, the Village of Mamaroneck, and the Village of Rye Brook.

⁴³ See <http://planning.westchestergov.com/images/stories/MapPDFS/CountySewerDistricts.pdf>.

The Port Chester Sanitary Sewer District serves the following municipalities: the Village of Mamaroneck and the Village of Rye Brook.

See Table 3 below, Municipalities in the Long Island Sound Sanitary Sewer Districts

Table 3 - Municipalities in the Long Island Sound Sanitary Sewer Districts

Municipality	Discharge Location (Sewer District)
Harrison	Blind Brook, New Rochelle
Larchmont	New Rochelle
Mamaroneck (Village)	Blind Brook, Mamaroneck
Mamaroneck (Town)	Mamaroneck, New Rochelle
New Rochelle	Mamaroneck, New Rochelle
Pelham Manor	New Rochelle
Port Chester	Port Chester
Rye	Blind Brook, Mamaroneck
Rye Brook	Blind Brook, Port Chester
Scarsdale	Mamaroneck
White Plains	Mamaroneck

A. The New Rochelle Sanitary Sewer District's SPDES Permit

The New Rochelle Sanitary Sewer District holds SPDES Permit No. NY-0026697 issued by the NYSDEC.⁴⁴ The District comprises the County trunk (collection) sewer system, including five pump station (with emergency bypass), two sanitary sewage overflow control facilities—the ORFs—and the WWTP, all regulated under SPDES Permit No. NY-0026697. The Effective Date of the Permit is 11/01/2007 and the Expiration Date is 10/31/2013. The Permit was modified on 05/01/2011.⁴⁵ The Permit has been administratively extended following the County's renewal application.

The New Rochelle WWTP is being upgraded to increase treatment capacity from 13.6 MGD to 20.6 MGD, in order to provide biological nutrient removal systems, secondary treatment upgrades, and to meet water quality based effluent limits. The upgraded treatment system

⁴⁴ NYSDEC, SPDES Permit No. NY-0026697 (attached hereto as Exhibit 2).

⁴⁵ See http://www.dec.ny.gov/enb/20100901_reg3.html.

includes screening, primary settling, pure oxygen activated sludge, final settling, fine screening, two-stage (nitrification-denitrification) biological filtration, and ultra-violet disinfection.

The New Rochelle WWTP improvements are being conducted under two different projects: the SPDES Improvements project and the Biological Nutrient Removal project. The SPDES Improvements project (the New Rochelle WWTP Composite Performance Implementation and Plant Expansion project) consists of secondary treatment upgrades (Carbonaceous oxygen demand “CBOD” and Total Suspended Solids “TSS”); upgrade of the solids handling, storage and dewatering system; and upgrades required to treat a new SPDES Permit flow limit of 20.6 MGD. As of March 31, 2015, it is estimated that 96.2% of the SPDES Improvements project, and that 96.6% of the Biological Nutrient Removal project, have been completed.⁴⁶

Accordingly, the SPDES Permit provides “Permit Limits, Action levels and Monitoring” for treatment capacity for both 13.6 MGD and 20.6 MGD, for the WWTP, Outfall No. 001. The SPDES Permit limits for treated discharges up to 13.6 MGD, is effective “05/01/11” and expiring upon “Completion of Construction.”⁴⁷ However, the SPDES Permit indicates that “Flow, CBODs, TSS, percent removals, and TRC [Total Residual Chlorine] are subject to the interim limits under Consent, Case No. CO 3-20080730-65.”⁴⁸

Pursuant to the 2008 Order on Consent, Case No. CO 3-20080730-65, the NYSDEC authorized flows up to 19.2 MGD maximum, as an interim limit for the WWTP, Outfall 001, and interim limits on CBOD Removal of 80 percent minimum, TSS Removal of 75 percent minimum, and TRC of 2.0 milligrams per liter (“mg/l”) maximum for Outfall 001.⁴⁹ See Table 5 - New Rochelle WWTP (Outfall No. 1) - Additional Interim Limits - NYSDEC Order on Consent, Case No. CO 3-20080730-65. These interim limitations to be in effect “EDO through DEC approval of the Design Report for Phase I at New Rochelle WWTP.”⁵⁰

Subsequently, through a SPDES Permit modification effective 05/01/2011, a permit limits page with limits for the proposed flow capacity of 20.6 MGD was added.⁵¹ Therefore, the SPDES Permit also includes “Permit Limits, Action levels and Monitoring” for the WWTP, Outfall No. 001, for discharges up to 20.6 MGD, effective “completion of construction” and expiring

⁴⁶ See Westchester County, Quarterly Report No. 25, p. 3.

⁴⁷ NYSDEC, SPDES Permit No. NY-0026697, Outfall 001, Permit Limits, Action levels and Monitoring -13.6 MGD, page 4 of 22. The SPDES Permit also indicates that these limitations “expire by December 31, 2014”

⁴⁸ NYSDEC, SPDES Permit No. NY-0026697, Outfall 001, Permit Limits, Action levels and Monitoring -13.6 MGD, Footnotes, page 4 of 22.

⁴⁹ NYSDEC, 2008 Consent Order, Appendix B, p. 30.

⁵⁰ NYSDEC, 2008 Consent Order, Appendix B, p. 30.

⁵¹ NYSDEC, SPDES Permit No. NY-0026697, Outfall 001, Permit Limits, Action levels and Monitoring -20.6 MGD, page 5 of 22).

10/31/12".⁵² See Table 4 - New Rochelle Sanitary Sewer District - Regulated Outfalls - NYSDEC SPDES Permit No. NY-0026697. As discussed further below, on April 30, 2015, the County reported to the NYSDEC that, as of March 31, 2015, approximately 96% of the upgrades have been completed.⁵³

In addition to Outfall 001—the WWTP's outlet—the SPDES Permit regulates several "Additional Outfalls", including the five pump station (with emergency bypass) and two sanitary sewage overflow control facilities—the ORFs—summarized in Table 4 - New Rochelle Sanitary Sewer District - Regulated Outfalls - NYSDEC SPDES Permit No. NY-0026697.

Notably, the SPDES permit limitations and conditions for the pump stations—with emergency bypass are—as follows:

In accordance with 6 NYCRR Part 750-1 and -2 and 40 CFR 122.41, bypass of the collection and treatment system without treatment are prohibited except when (1) the bypass is necessary to prevent loss of life, personal injury, public health hazard or severe property damage and (2) there is no feasible alternative to the bypass and (3) the permittee complies with the notice requirements in 6 NYCRR Part 750-2.7.⁵⁴

Further, as noted above, pursuant to 6 NYCRR § 750-2.7, a bypass must be reported orally within two hours of the permittee becoming aware of the discharge, for discharges of untreated or partially treated sewage that would affect bathing areas during the bathing season or shellfishing, and within 24 hours for all areas. A written report of a bypass must also be provided within five (5) days of the time the permittee becomes aware of the circumstances. In addition, this provision calls for a duty to mitigate: "The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit, which has a reasonable likelihood of adversely affecting human health or the environment."

⁵² NYSDEC, SPDES Permit No. NY-0026697, Outfall 001, Permit Limits, Action levels and Monitoring -20.6 MGD, page 5 of 22.

⁵³ Westchester County, Quarterly Report No. 25, p. 3.

⁵⁴ NYSDEC, SPDES Permit, Additional Outfalls, page 2 of 22.

Table 4 - New Rochelle Sanitary Sewer District - Regulated Outfalls - NYSDEC SPDES Permit No. NY-0026697

Outfall No.	Description	Flow Limit	Receiving Water/ Class
No.001	New Rochelle WWTP	13.6 MGD "Monthly Average" Effective "05/01/11" expiring "completion of construction" 20.6 MGD "Monthly Average" effective "completion of construction" expiring "10/31/12" Up to 55 MGD - Wet Weather Operations Plan (1)	Long Island Sound / SB
No.003	Flint Ave & Cherry Ave - SSO Control Facility	"Monitor" "Daily Maximum", effective "September 1, 2004" expiring "August 1, 2014"	Long Island Sound / SB
No.004	Sutton Manor Pump Station	Prohibited except emergency bypass (2)	Echo Bay to Long Island Sound
No.005	Whitewood Ave- SSO Control Facility	"Monitor" "Daily Maximum", effective "September 1, 2004" expiring "August 1, 2014"	Long Island Sound / SB
No.006	Park / Circle Pump Station	Prohibited except emergency bypass (2)	Long Island Sound / SB
No.007	Magnolia Pump Station	Prohibited except emergency bypass (2)	Long Island Sound / SB
No.008	Glen Island (Casino) Pump Station	Prohibited except emergency bypass (2)	Long Island Sound / SB
No.009	Glen Island (Casino) Pump Station	Prohibited except emergency bypass (2)	Long Island Sound / SB

Footnotes:

(1) During wet weather events, flow to the activated sludge system will be limited to 32 MGD. Flows in excess of 32 MGD will be combined with Final Settling Tank effluent at the Intermediate Pumping Station, which will direct all flow directly to the new nitrogen removal facilities prior to Ultra Violet disinfection and then discharge.⁵⁵

⁵⁵ Pursuant to 2008 Consent Order. See Westchester County, Department of Environmental Facilities, New Rochelle Wastewater Treatment Plant Wet Weather Operations Plan (2014), at p. 2-1, herein ("New Rochelle WWOP") available at <http://environment.westchestergov.com/images/stories/qrly/WetWeatherNRMay2014.pdf>.

(2) In accordance with 6 NYCRR Part 750-1 and -2 and 40 CFR 122.41, bypass of the collection and treatment system without treatment are prohibited except when (1) the bypass is necessary to prevent loss of life, personal injury, public health hazard or severe property damage and (2) there is no feasible alternative to the bypass and (3) the permittee complies with the notice requirements in 6 NYCRR Part 750-2.7.

Table 5 - New Rochelle WWTP (Outfall No. 1) - Additional Interim Limits - NYSDEC Order on Consent, Case No. CO 3-20080730-65

Parameter	Duration	Interim Limits
Flow	EDO through DEC approval of the Design Report for Phase I at New Rochelle WWTP	19.2 MGD maximum
CBOD % Removal	EDO through DEC approval of the Design Report for Phase I at New Rochelle WWTP	80% minimum
TSS % Removal	EDO through DEC approval of the Design Report for Phase I at New Rochelle WWTP	75% minimum
Total Residual Chlorine ("TRC")	EDO through DEC approval of the Design Report for TRC reductions in the New Rochelle WWTP	2.0 mg/l maximum

Outfalls 003 and 005 correspond to the two Sanitary Sewage Overflow Control Facilities—also termed ORFs—that withhold and partially treat with chlorine and discharge sanitary sewage flows during wet weather under the following rule: “No discharge except as caused by excess flows associated with the design storm for the retention facility.”⁵⁶ The SPDES Permit included interim permit limits for the ORFs including Chlorine and Oil and Grease removal.⁵⁷

In addition, “Special Conditions For Operation of Retention Facility” in the SPDES Permit are:⁵⁸

⁵⁶ NYSDEC, SPDES Permit No. NY-0026697, Interim Permit Limits, levels and Monitoring - Retention Facilities, Footnote (1), page 11 of 22.

⁵⁷ NYSDEC, SPDES Permit No. NY-0026697, Interim Permit Limits, levels and Monitoring - Retention Facilities, page 11 of 22).

⁵⁸ NYSDEC, SPDES Permit No. NY-0026697, Interim Permit Limits, levels and Monitoring - Retention Facilities, page 11 of 22).

- (1) The facilities shall be operated in conjunction with the County sewer system, pump stations and the WWTP to maximize pollutant removal. The County will notify municipalities tributary to the County system of action(s) they should take to further this goal.
- (2) The permittee shall not divert to the retention facility unless the tank volume is full and the Flint Ave. pump station cannot accept additional wastewater.
- (3) The permittee shall not discharge from the retention facility unless the tank volume is full and the Flint Ave. pump station cannot accept additional wastewater.
- (4) The contents of the retention facility, (i.e. captured wastewater) shall not be delivered to the WWTP at a rate which would exceed the peak daily or peak hourly design flow or loading.
- (5) Flow shall not be delivered to the WWTP at a rate that will cause an upset as defined by 6 NYCRR Part 750-1.2(a).
- (6) Discharges from the retention facility shall not cause or contribute to a violation of water quality standards at 6 NYCRR Part 703.

The SPDES Permit also includes “Best Management Practices for Sanitary Sewer Systems with Active Overflows within the Sewer System Owned and Operated by the County,” including the following measures—several of which relate to preventing, reducing or eliminating inflow and infiltration:⁵⁹

- Dry weather overflows of the sewer system are prohibited.
- The permittee shall optimize the sewer system by operating and maintaining it to minimize the discharge of pollutants from overflows.
- No new source of stormwater shall be connected to any separate sanitary sewer in the collection system.
- Sanitary sewer extensions shall be designed and constructed without storm sewer interconnections.
- The permittee shall maximize flow up to the peak design capacity of the POTW Treatment Plant during periods of wet weather.
- The permittee shall submit to the [NYSDEC] Regional Water Engineer a Monthly Overflow Report summarizing, for each day that an overflow occurs any overflow points, an estimate of the total volume and duration of each overflow, measurements of the total amount of rainfall, a description of the source of each overflow and visual observation of water quality at each outfall.
- The permittee shall conduct a maintenance and inspection program of pumping stations and the overflow facilities at outfalls No. 003 through 009. This program shall consist of minimum monthly inspections with required repair, cleaning and maintenance done as needed. This is to insure that no discharges occur during dry weather and that the maximum amount of wet weather is conveyed to the POTW treatment plant for treatment. ...
- ...The permittee shall inform the NYSDER of all reported instances known to the permittee of sewage backing up into houses or discharge of raw sewage from surcharging manholes onto

⁵⁹ NYSDEC, SPDES Permit No. NY-0026697, “Best Management Practices for Sanitary Sewer Systems with Active Overflows within the Sewer System Owned and Operated by the County,” page 12 of 22.

the ground surface and the conditions (wet weather, sewage blockage, etc) which caused this to occur.

- If, there are documented, recurrent instances of sewage backing up into house(s) or discharge of raw sewage onto ground surface from surcharging manholes(s), the permittee shall, upon letter notification from [NYS]DEC, prohibit further connections, except as provided below, that would make the surcharging/backup problems worse.
- Connections may be allowed by the permittee prior to long term remediation of the problem provided that the units to be connected had received building permits prior to determination of a recurrent surcharging/backup situation; or (1) "reasonable relief measures" have been taken to reduce infiltration/inflow flow rates and maximize sewage transmission in the area affected and (2) for each home equivalent to be connected, those measures will provide more than 5 gallons per minute (GPM) additional sewage transmission capacity to the area affected by surcharging/backup problems and (3) if long term remediation is necessary, the permittee has entered consent order negotiations or is in compliance with an enforceable (permit or consent order) schedule to eliminate the recurrent surcharging/backup problems. In the event that negotiations to enter into a consent order are unsuccessful, the [NYS]DEC may, by letter notification, serve notice that all further connections that would make surcharging/backup problems worse will be prohibited.
- "Reasonable relief measures" may include, but are not limited to, permanent disconnection of a sump pump, roof leader or a footing drain; substantial elimination of inflow and infiltration from a manhole; repair of cracked pipe, bad joint or house lateral connection; cleaning of sewage transmission devices such as sewer, force mains, and siphons; pump rehabilitation of vent risers; etc.
- The permittee shall implement a public notification program to inform citizens of the location and occurrence of SSO events. This program shall include a mechanism (public media broadcast, standing beach advisories, newspaper notice etc.) to alert potential users of the receiving waters affected by SSOs. The program shall include a system to determine the nature and duration of conditions that are potentially harmful to users of these receiving waters due to SSOs.

Under the SPDES Permit, authorization for discharges from outfalls 003 and 005 was effective September 1, 2004, expiring on August 1, 2014. Specifically, the SPDES Permit states: "The permittee shall either eliminate discharges for the ORF or comply with the effluent limitations specified in 40 CFR Part 133 by August 1, 2014."⁶⁰ 40 CFR Part 133 provides the level of effluent quality attainable through the application of secondary or equivalent treatment.⁶¹ Secondary treatment requires minimum level of effluent quality attainable by secondary

⁶⁰ NYSDEC, SPDES Permit No. NY-0026697, Interim Permit Limits, levels and Monitoring - Retention Facilities, page 11 of 22.

⁶¹ See 40 CFR §133.100 (available at <http://www.cfr.regstoday.com/40cfr133.aspx>).

treatment in terms of the parameters for biochemical oxygen demand, total suspended solids and pH.⁶² The ORFs do not provide secondary treatment before discharging to Long Island Sound.

The Flint Ave & Cherry Ave - SSO Control Facility (Outfall 003) holds up to a 300,000 gallons of sewage. The Whitewood Ave - SSO Control Facility (Outfall 005) (also know as Fort Slocum) holds up to 1.5 million gallons of wastewater. The ORFs activate when the capacity of the collection system is exceeded. These facilities are designed to treat excess wet-weather flows that would otherwise overwhelm the collection system and be discharged untreated. Wastewater is chlorinated and goes out to Long Island Sound (via Outfalls 003 and 005). During rain events, due primarily to inflow and infiltration in the County sewage collection system and in the tributary sewer systems, the retention facilities may overload and discharges partially treated sewage into Long Island Sound, as illustrated in Tables 6 and 7 below.⁶³

⁶² See 40 CFR §133.102 (available at <http://www.cfr.regstoday.com/40cfr133.aspx>).

⁶³ Sources: Westchester County, New York, Department of Environmental Facilities, New Rochelle Sanitary Sewer District, Overflow Retention Facility, Discharge Monitoring Report, June 2013 (Attached hereto as Exhibit 8); Westchester County, New York, Department of Environmental Facilities, New Rochelle Sanitary Sewer District, Overflow Retention Facility, Discharge Monitoring Report, 2014 Annual Summary (Attached hereto as Exhibit 9); NYSDEC, SPDES Permit No. NY-0026697, DMRs 2008-2015.

**Table 6 - Flint Ave & Cherry Ave - SSO Control Facility (Outfall No. 3) - Discharges
 2008-2015 - NYSDEC SPDES Permit No. NY-0026697**

Date	Flow (MG)	Coliform (No./100ml)
02/29/2008	0.46	24000
09/30/2008	0.25	24000
12/31/2008	1.12	24000
06/30/2009	1.40	41
02/28/2010	0.56	40
03/31/2010	1.82	240000
03/31/2011	0.56	240000
05/31/2011	0.67	240000
08/31/2011	1.02	240000
09/30/2011	4.56	240000
09/30/2012	0.19	240000
06/30/2013	0.47	240000
03/31/2014	0.64	136059
04/30/2014	1.58	44398
12/31/2014	0.92	107331

Table 7 - Whitewood Ave - SSO Control Facility (Fort Slocum) (Outfall No. 5) - Discharges 2008-2015 -NYSDEC SPDES Permit No. NY-0026697

Date	Flow (MG)	Coliform (No./100ml)
09/30/2008	0	41
06/30/2009	0	240000
03/31/2010	2	240000
03/31/2011	1	240000
08/30/2011	1	240000
09/30/2011	2	240000
09/30/2012	0	240000
06/30/2013	1	980
04/30/2014	2	267851

During rain events, the rate of sewage flow increases substantially, sometimes meeting or exceeding the trunk line hydraulic capacity of 55 MGD.⁶⁴ Consequently, the 2008 Consent Order required the County to develop a Wet Weather Operations Plan (“WWOP”) for the New Rochelle and Mamaroneck WWTPs that “shall specify method of operating the treatment facilities and unit processes at such Westchester County WWTPs in order to meet their highest treatment capability during wet weather flows,”⁶⁵ to be submitted by June 1, 2014.⁶⁶ New Rochelle’s WOOP was timely submitted and was approved by the NYSDEC on July 21, 2014.⁶⁷

In brief, New Rochelle’s WWOP indicates how the WWTP will handle increased flows up to 55 MGDs. Sewage flow exceeding the trunk line hydraulic capacity of 55.0 MGD may result in sanitary sewage overflows in the District. According to the WWOP:

The WWTP has been designed for a Raw Influent Peak Hourly Flow of 55.6 MGD.... During wet weather events, flow to the activated sludge system (the

⁶⁴ See New Rochelle Sustainability Plan 2010-2030, available at <http://newrochelleny.com/DocumentCenter/Home/View/2054>.

⁶⁵ NYSDEC, Order on Consent, Case No. CO 3-20080730-65, p. 8.

⁶⁶ NYSDEC, Order on Consent, Case No. CO 3-20080730-65, Appendix A – Schedule of Compliance, Required Action 21.

⁶⁷ See New Rochelle WWOP. See County of Westchester, Quarterly Report No. 25, p. 15.

Oxygenation Tanks and the Final Settling Tanks) will be limited to 32 MGD to avoid solids washout in the Final Settling Tanks. Flows in excess of 32 MGD will be combined with Final Settling Tank effluent at the new Intermediate Pumping Station. The Intermediate Pumping Station has been designed to direct all flow directly to the new nitrogen removal facilities (fine screens, nitrification filters and denitrification filters) prior to Ultra Violet disinfection and then discharge.⁶⁸

Finally, the SPDES Permit, requires implementation and monitoring of the “Inflow/Infiltration Program.” The SPDES Permit’s Schedule of Compliance, explicitly includes the “Inflow/Infiltration Program”, and requires that “[t]he permit shall continue to monitor I/I levels and submit a summary report to the Department on an annual basis” by “[e]very March 1st.”⁶⁹ This program was also a condition of the previous SPDES permit, the 2002-2007 SPDES Permit for the District, which included Inflow/Infiltration “Compliance Actions” in the “Schedules of Compliance”, as stated in Table 8 below, to *“become part of, and enforceable under, this permit.”*

In connection with the Inflow/Infiltration Program, as explained further below, the 2008 Consent Order required Westchester County to: (1) prepare of an “Inflow/infiltration investigation at the New Rochelle Sanitary Sewage District” by July 26, 2006; (2) “Provide documentation to [NYS]DEC that Respondent gained access to right s to install flow meters in the tributary communities” by April 1, 2008; and (3) “Develop flow reduction strategy” by October 1, 2013.⁷⁰

⁶⁸ New Rochelle WWOP, at p. 2-1.

⁶⁹ NYSDEC, SPDES Permit No. NY-0026697, Schedule of Compliance, page 20 of 22.

⁷⁰ See NYSDEC, 2008 Consent Order, Appendix A, Items 2, 6, and 18.

Table 8 - New Rochelle Sanitary Sewer District - Inflow/Infiltration Actions 2005-2006

Compliance Action	Due Date
The approved Westchester County Inflow/Infiltration Program Effectiveness Evaluation Report, December, 2003, recommends the actions below. These actions shall be completed in accordance with the due dates herein:	
1. Installation of rain gauges with 15 minute interval reading capability and digital storage of data at the WWTP ;	January 1, 2005
2. Modification of flow recording equipment at the WWTP to permit continuous, digitized readings;	January 1, 2005
3. Monitor of the I/I levels on an annual basis at the WWTP;	March 1, 2005 and every March 1st thereafter
4. A smoke testing, weir testing and CCTV [closed-circuit TV] program shall be undertaken in all areas of the sewer district not already done in the original SSES.	January 1, 2006
An approvable report, summarizing the results of the work detailed in #4, and including a schedule of implementation of a Phase II -I/I Removal Program, shall be submitted to the Department. Upon approval of the report, the schedule shall become part of, and enforceable under, this permit.	June 1, 2006

B. The Mamaroneck Sanitary Sewer District's SPDES Permit

The Mamaroneck Sanitary Sewer District holds SPDES Permit No. NY-0026701 issued by the NYSDEC.⁷¹ The District comprises the County trunk (collection) sewer system, including three pump station (with emergency bypass) and the WWTP, all regulated under SPDES Permit No. NY-0026701. The Effective Date of the Permit is 04/01/2008 and the Expiration Date is 03/31/2013. The Permit was modified on 05/01/2011.⁷² The Permit has been administratively extended following County's renewal application.

The Mamaroneck WWTP was originally constructed in the 1930s and the secondary treatment facilities were added in the 1980s. In 2013, the County completed upgrades to the WWTP, as required by the Consent Orders, to meet a TMDL for total effluent nitrogen loading discharge to the Long Island Sound. The WWTP has been upgraded to increase treatment capacity from 20.6 MGD to 23.2 MGD, in order to provide biological nutrient removal systems, secondary treatment upgrades, and to meet water quality based effluent limits. The following treatment systems have been modified, or installed in the upgrade: initial screening system, grit removal, fine screen, integrated fixed-film activated sludge, and chlorine disinfection. The sludge and scum from the facility are pumped to New Rochelle WWTP for treatment and disposal.⁷³

As reported by the County to the NYSDEC on April 30, 2015, the upgrade has been completed:

On December 7, 2009 NYSDEC approved the Mamaroneck WWTP Nitrogen Removal project design documents (Plans and Specifications). ... Respondent notified NYSDEC on July 29, 2013 that substantial completion of the Phase 1 Nitrogen Removal Project Construction was achieved on July 18, 2013. On September 18, 2013 NYSDEC notified Respondent that its September 6, 2013 inspection of the Mamaroneck WWTP confirmed that construction of the Phase 1 Nitrogen Removal Project was substantially complete. On May 2, 2014 Respondent notified NYSDEC by letter that the Mamaroneck WWTP had met the 12 MRA interim limit of 829 lbs/day by January 30, 2014. .. Respondent complied with Required Action 23 of Appendix A of the 2008 Order on Consent, as modified by the Consent Order Modification, dated October 30, 2012, and the force majeure extension, to operate the New Rochelle and Mamaroneck WWTPs in compliance with the Aggregate 12 Month Rolling Average (12-MRA) interim limit of 1,418 lbs./day of Total Nitrogen by the deadline date of January 30, 2015.⁷⁴

⁷¹ NYSDEC, SPDES Permit No. NY-0026701 (attached hereto as Exhibit 3).

⁷² See http://www.dcc.ny.gov/cnb/20100901_reg3.html.

⁷³ NYSDEC, Municipal Fact Sheet, SPDES Permit No. NY-0026701 (2011), page 1 of 13.

⁷⁴ See Westchester County, Quarterly Report No. 25, pp. 2-3.

Accordingly, the SPDES Permit provides “Permit Limits, Action levels and Monitoring” for treatment capacity for both 20.6 MGD and 23.2 MGD, for the WWTP, Outfall No. 001. The SPDES Permit limits for treated discharges up to 20.6 MGD, is effective “05/01/11” and expiring upon “Completion of Construction.”⁷⁵ Subsequently, through a SPDES Permit modification effective 05/01/2011, a permit limits page with limits for the proposed flow capacity of 23.2 MGD was added.⁷⁶ Therefore, the SPDES Permit also includes “Permit Limits, Action levels and Monitoring” for the WWTP, Outfall No. 001, for discharges up to 23.2 MGD, effective “completion of construction” and expiring 03/31/13.”⁷⁷ See Table 9 - Mamaroneck Sanitary Sewer District - Regulated Outfalls - NYSDEC SPDES Permit No. NY-0026701.

In addition to Outfall 001—the WWTP’s outlet—the SPDES Permit regulates several “Additional Outfalls”, including the three pump station (with emergency bypass) summarized in Table 9 - Mamaroneck Sanitary Sewer District - Regulated Outfalls - NYSDEC SPDES Permit No. NY-0026701.

For the pump stations with emergency bypass, the SPDES Permit includes limitations and conditions, as follows:

“In accordance with 6 NYCRR Part 750-1 and -2 and 40 CFR 122.41, bypass of the collection and treatment system without treatment are prohibited except when (1) the bypass is necessary to prevent loss of life, personal injury, public health hazard or severe property damage and (2) there is no feasible alternative to the bypass and (3) the permittee complies with the notice requirements in 6 NYCRR Part 750-2.7.”⁷⁸

As noted above, pursuant to 6 NYCRR § 750-2.7, a bypass must be reported orally within two hours of the permittee becoming aware of the discharge, for discharges of untreated or partially treated sewage that would affect bathing areas during the bathing season or shellfishing, and within 24 hours for all areas. A written report of a bypass must also be provided within five (5) days of the time the permittee becomes aware of the circumstances. In addition, this provision calls for a duty to mitigate: “The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit, which has a reasonable likelihood of adversely affecting human health or the environment.”

⁷⁵ NYSDEC, SPDES Permit No. NY-0026701, Outfall 001, Permit Limits, Action levels and Monitoring -20.6 MGD, page 4 of 18.

⁷⁶ NYSDEC, SPDES Permit No. NY-0026701, Outfall 001, Permit Limits, Action levels and Monitoring -23.2 MGD, page 5 of 18.

⁷⁷ NYSDEC, SPDES Permit No. NY-0026701, Outfall 001, Permit Limits, Action levels and Monitoring -23.2 MGD, page 5 of 18.

⁷⁸ NYSDEC, SPDES Permit No. NY-0026701, Additional Outfalls, page 2 of 18.

Table 9 - Mamaroneck Sanitary Sewer District - Regulated Outfalls - NYSDEC SPDES Permit No. NY-0026701

Outfall No.	Description	Flow Limit	Receiving Water/ Class
No.001A	WWTP	20.6 MGD "Monthly Average" Effective "05/01/11" expiring "completion of construction" 23.2 MGD "Monthly Average" effective "completion of construction" expiring "03/31/13" Up to 104 MGD - Wet Weather Operations Plan - (see Table 2 below)	Long Island Sound / SB
No.001	Old Plant Outfall (1)	to be used as a backup (1)	Long Island Sound / SB
No.002	Harbor Island Park (2)	Prohibited except emergency bypass (2)	Long Island Sound / SB
No.003	East Basin Pump Station (emergency bypass) (3)	Prohibited except emergency bypass (3)	Guion Creek to Mamaroneck Harbor
No.004	West Basin Pump Station (emergency bypass) (3)	Prohibited except emergency bypass (3)	Mamaroneck Harbor to Long Island Sound
No.005	Flager Drive Pump Station (emergency bypass) (3)	Prohibited except emergency bypass (3)	Long Island Sound / SB

Footnotes:

(1) The old plant Outfall 001 is to be used as a backup in the event the new Outfall 001A has to be shut down. Prior approval to discharge from Outfall 001 must be granted by the NYSDEC in the event it must be utilized.

(2) Outfall 002 is to be utilized only in an emergency to bypass influent that is determined to be of an explosive nature, that could cause harm to life or property. Oral and written notification must be provided to NYSDEC in the event it is utilized.

(3) In accordance with 6 NYCRR Part 750-1 and -2 and 40 CFR 122.41, bypass of the collection and treatment system without treatment are prohibited except when (1) the bypass is necessary to prevent loss of life, personal injury, public health hazard or severe property damage and (2) there is no feasible alternative to the bypass and (3) the permittee complies with the notice requirements in 6 NYCRR Part 750-2.7.

During rain events, the rate of sewage flow increases substantially, sometimes meeting or exceeding the trunk line hydraulic capacity of 104 MGD. Consequently, the 2008 Consent Order required the County to develop a WWOP for the Mamaroneck WWTP that “shall specify method of operating the treatment facilities and unit processes at such Westchester County WWTPs in order to meet their highest treatment capability during wet weather flows,”⁷⁹ to be submitted by June 1, 2014.⁸⁰ Mamaroneck’s WOOP was timely submitted and was approved by the NYSDEC on July 21, 2014.⁸¹

In brief, the Mamaroneck’s WWOP indicates how the WWTP will handle increased flows up to 104 MGDs:

The recently upgraded WWTP has a maximum flow of 20.6 million gallons per day (mgd). The annual average flow is about 18 mgd. The plant provides preliminary and primary treatment for flow conveyed to the WWTP and secondary treatment for flows up to 40 mgd. All effluent is disinfected before discharge. Primary sludge and scum, waste sludge, and secondary scum are collected and pumped to the nearby New Rochelle WWTP for solids processing and disposal. Process flow conditions are summarized in [Table 10].⁸²

Sodium hypochlorite is used for chlorination of the secondary effluent as well as primary effluent during flow conditions above 40 mgd.⁸³

The Mamaroneck WWTP has historically received influent flows that vary over a wide range. Historical data indicates that the plant has experienced an instantaneous influent flow of over 98 MGD (e.g. March 30, 2010).⁸⁴ Excessive flows have resulted in sanitary sewage overflows in the District.

⁷⁹ NYSDEC, Order on Consent, Case No. CO 3-20080730-65, p. 8.

⁸⁰ NYSDEC, Order on Consent, Case No. CO 3-20080730-65, Appendix A – Schedule of Compliance, Required Action 21.

⁸¹ See Westchester County, Department of Environmental Facilities, Mamaroneck Wastewater Treatment Plant, Wet Weather Operations Plan (2014), herein (“Mamaroneck WWOP”) available at <http://environment.westchestergov.com/images/stories/qrty/WetWeatherMam010614.pdf>
See County of Westchester, Quarterly Report No. 25, p. 3.

⁸² Mamaroneck WWOP, p. 2.

⁸³ Mamaroneck WWOP, p. 8.

⁸⁴ Mamaroneck WWOP, p. 11.

Table 10 - Mamaroneck's WWTP Wet Weather Operations Plan - Process Flows

Flow Parameter	Flow (MGD)
Average annual	18
Permitted maximum monthly average flow	20.6 (1)
Peak flow to primary treatment and disinfection	104 (2)
Peak flow to secondary treatment and disinfection	40

Footnotes:

(1) Permitted maximum monthly average flow will be 23.2 MGD three months after acceptance by NYSDEC of construction completion.

(2) Inclusive of secondary treatment flow at peak of 40 MGD.

Finally, the SPDES Permit, requires implementation and monitoring of the “Inflow/Infiltration Program.” The SPDES Permit’s Schedule of Compliance, explicitly includes the “Inflow/Infiltration Program”, and requires that “[t]he permit shall continue to monitor I/I levels and submit a summary report to the Department on an annual basis” by “[e]very March 1st.”⁸⁵ This program was included in the previous SPDES permit, the 2003-2008 SPDES Permit for the District, which included Inflow/Infiltration “Compliance Actions” in the “Schedules of Compliance”, as stated in Table 11 below.

In connection with the Inflow/Infiltration Program, as explained further below, the NYSDEC required Westchester County to: (1) “Provide documentation to [NYS]DEC that Respondent gained access to rights to install flow meters in the tributary communities” by April 1, 2008; and (2) “Develop flow reduction strategy” by October 1, 2013.⁸⁶

⁸⁵ NYSDEC, SPDES Permit No. NY-0026701 , Schedule of Compliance, page 20 of 22.

⁸⁶ See NYSDEC, 2008 Consent Order, Appendix A, Items 2, 6, and 18.

Table No 11. Mamaroneck Sanitary Sewer District - Inflow/Infiltration Actions 2005

Compliance Action	Due Date
The approved Westchester County Inflow/Infiltration Program Effectiveness Evaluation Report, December 2003, recommends the actions below.	These actions shall be completed in accordance with the due dates herein:
1. Installation of rain gauges with 15 minute interval reading capability and digital storage data at the WWTP	January 1, 2005
2. Modification of flow recording equipment at the WWTP to permit continuous, digitized readings	January 1, 2005
3. Monitor of the I/I levels on an annual basis at the WWTP	March 1, 2005 and every March 1st thereafter

C. The Blind Brook Sanitary Sewer District's SPDES Permit

The Blind Brook Sanitary Sewer District holds SPDES Permit No. NY-0026719 issued by the NYSDEC.⁸⁷ The District comprises the County trunk (collection) sewer system, including a pump station (with emergency bypass) and the WWTP, located at 141 Oakland Beach Ave Rye, NY, all regulated under SPDES Permit No. NY-0026719. The Effective Date of the Permit is 12/01/2002 and the Expiration Date is 12/01/2007. The Permit was modified on 01/01/2005.⁸⁸ The Permit has been administratively extended following County's renewal application.

The Blind Brook WWTP has a treatment capacity of 5 MGD. Accordingly, the SPDES Permit provides "Permit Limits, Action levels and Monitoring" for the treatment capacity of 5 MGD, for the WWTP, Outfall No. 001."⁸⁹ Subsequently, through a SPDES Permit modification effective 01/01/2005, certain effluent limits were modified.⁹⁰ In addition to Outfall 001—the WWTP's outlet—the SPDES Permit regulates several "Additional Outfalls", including the Treatment plant emergency bypass and the Playland Pump Station (with emergency bypass) summarized in Table

⁸⁷ NYSDEC, SPDES Permit No. NY-0026719 (attached hereto as Exhibit 4).

⁸⁸ See <http://www.dec.ny.gov/enb2004/20040915/Reg3.html>.

⁸⁹ NYSDEC, SPDES Permit No. NY-0026719, Outfall 001, Permit Limits, Action levels and Monitoring, page 4 of 18.

⁹⁰ See <http://www.dec.ny.gov/enb2004/20040915/Reg3.html>. NYSDEC, SPDES Permit No. NY-0026719, Outfall 001, Permit Limits, Action levels and Monitoring, page 4 of 18.

12 - Blind Brook Sanitary Sewer District - Regulated Outfalls - NYSDEC SPDES Permit No. NY-0026719.

For the pump stations with emergency bypass, the SPDES Permit included limitations and conditions, as follows:

“In accordance with 6 NYCRR Part 750-1 and -2 and 40 CFR 122.41, bypass of the collection and treatment system without treatment are prohibited except when (1) the bypass is necessary to prevent loss of life, personal injury, public health hazard or severe property damage and (2) there is no feasible alternative to the bypass and (3) the permittee complies with the notice requirements in 6 NYCRR Part 750-2.7.”⁹¹

As noted above, pursuant to 6 NYCRR § 750-2.7, a bypass must be reported orally within two hours of the permittee becoming aware of the discharge, for discharges of untreated or partially treated sewage that would affect bathing areas during the bathing season or shellfishing, and within 24 hours for all areas. A written report of a bypass must also be provided within five (5) days of the time the permittee becomes aware of the circumstances. In addition, this provision calls for a duty to mitigate: “The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit, which has a reasonable likelihood of adversely affecting human health or the environment.”

⁹¹ NYSDEC, SPDES Permit No. NY-0026719, Additional Outfalls, page 2 of 18.

Table 12 - Blind Brook Sanitary Sewer District - Regulated Outfalls - NYSDEC SPDES Permit No. NY-0026719

Outfall No.	Description	Flow Limit	Receiving Water/ Class
No.001	WWTP	5 MGD "Monthly Average" Effective "01/01/05" expiring "Expiration Date"	Long Island Sound / SB
No.003	Treatment plant emergency bypass	Prohibited except emergency bypass (1)	Long Island Sound / SB
No.004	Playland Pump Station	Prohibited except emergency bypass (1)	Playland Lake to Long Island Sound

Footnote:

(1) In accordance with 6 NYCRR Part 750-1 and -2 and 40 CFR 122.41, bypass of the collection and treatment system without treatment are prohibited except when (1) the bypass is necessary to prevent loss of life, personal injury, public health hazard or severe property damage and (2) there is no feasible alternative to the bypass and (3) the permittee complies with the notice requirements in 6 NYCRR Part 750-2.7.

Finally, the SPDES Permit, requires implementation and monitoring of the "Inflow/Infiltration Program." The SPDES Permit's "Schedule of Compliance", explicitly includes the "Inflow/Infiltration Program", and requires monitoring of the I/I levels on an annual basis and reports "every March 1st" as stated in Table 13 below.⁹²

In connection with the Inflow/Infiltration Program, as explained further below, the NYSDEC required Westchester County to: (1) "Provide documentation to [NYS]DEC that Respondent gained access to rights to install flow meters in the tributary communities" by April 1, 2008; and (2) "Develop flow reduction strategy" by October 1, 2013.⁹³

⁹² NYSDEC, SPDES Permit No. NY-0026719, Schedule of Compliance, page 16 of 18.

⁹³ See NYSDEC, 2008 Consent Order, Appendix A, Items 2, 6, and 18.

Table - 13 - Blind Brook Sanitary Sewer District - Inflow/Infiltration Actions

Compliance Action	Due Date
The approved Westchester County Inflow/Infiltration Program Effectiveness Evaluation Report, December 2003, recommends the actions below.	These actions shall be completed in accordance with the due dates herein:
1. Installation of rain gauges with 15 minute interval reading capability and digital storage data at the WWTP	January 1, 2005
2. Modification of flow recording equipment at the WWTP to permit continuous, digitized readings	January 1, 2005
3. Monitor of the I/I levels on an annual basis at the WWTP	March 1, 2005 and every March 1st thereafter

D. The Port Chester Sanitary Sewer District's SPDES Permit

The Port Chester Sanitary Sewer District holds SPDES Permit No. NY-00226786 issued by the NYSDEC.⁹⁴ The District comprises the County trunk (collection) sewer system) and the WWTP, located at Fox Island Road, Port Chester, NY, all regulated under SPDES Permit No. NY-00226786. The Effective Date of the Permit is 04/01/2008 and the Expiration Date is 03/31/2013. The Permit was modified on 04/01/2008. The Permit has been administratively extended following County's renewal application.

The Port Chester WWTP has a treatment capacity of 6 MGD. Accordingly, the SPDES Permit provides "Permit Limits, Action levels and Monitoring" for the treatment capacity of 6 MGD, for the WWTP, Outfall No. 001.⁹⁵ Subsequently, through a SPDES Permit modification effective 04/01/2008, certain effluent limits were modified.

In connection with Inflow/Infiltration, as explained further below, the NYSDEC required Westchester County to: (1) "Provide documentation to [NYS]DEC that Respondent gained access to rights to install flow meters in the tributary communities" by April 1, 2008; and (2) "Develop flow reduction strategy" by October 1, 2013.⁹⁶

⁹⁴ NYSDEC, SPDES Permit No. NY-00226786 (attached hereto as Exhibit 5).

⁹⁵ NYSDEC, SPDES Permit No. NY-00226786, Outfall 001, Permit Limits, Action levels and Monitoring, page 3 of 16.

⁹⁶ See NYSDEC, 2008 Consent Order, Appendix A, Items 2, 6, and 18.

E. The Consent Orders

1. The 1998 Consent Order

Westchester County has struggled to comply with the SPDES Permits for the WWTPs for decades. A Consent Order was executed between the County and NYSDEC on August 17, 1998, which required the County to implement an Inflow and Infiltration Rehabilitation Program (“I/I Rehabilitation Program”).⁹⁷ This Consent Order required repairs to the sanitary sewer systems tributary to the County-owned wastewater treatment plants.⁹⁸ I/I Rehabilitation Program, conducted in 2000-2002, removed between 4.8 and 8 MGD of infiltration (estimated at 18 MGD). The reduction is equivalent to 26.6% to 44.4% of the estimated infiltration level, thus not even half of the identified infiltration problem was addressed (using the County’s higher figure). In brief, the 2000-2002 I/I Rehabilitation Program was as step in the right direction, but inadequate.

As explained in the 2003 Inflow/Infiltration Rehabilitation Program Effectiveness Evaluation Report:

The local sewer collection systems in Westchester County are owned by the individual municipalities and the obligation to fix the I/I problems in the sewers rested with each municipality. The County executive undertook the I/I Rehabilitation Program on behalf of the municipalities, resulting in significant County-wide savings. Each of the contributing municipalities became an active partner in the overall program and each executed a separate Consent Order with Westchester County. *The I/I Rehabilitation Program was developed based on I/I sources originally identified in the Sewer System Evaluations Surveys (SSES) completed in each of the four districts in 1993/94.*⁹⁹

The 1998 Consent Order included specific removal goals for the identified infiltration and identified inflow, as follows: in the New Rochelle Sanitary Sewage District, 40% Infiltration % Removal and 90% Inflow % Removal; in the Mamaroneck Sanitary Sewage District, 60% Infiltration % Removal and 90% Inflow % Removal; in the Blind Brook Sanitary Sewage District, 60% Infiltration % Removal and 60% Inflow % Removal.¹⁰⁰ See Table 14 below, Inflow/Infiltration Rehabilitation Program - Removal Goals.

⁹⁷ See Westchester County I/I Rehabilitation Program Report.

⁹⁸ Westchester County I/I Rehabilitation Program Report, p. ES-1.

⁹⁹ Westchester County I/I Rehabilitation Program Report, p. ES-1 (emphasis supplied).

¹⁰⁰ Westchester County I/I Rehabilitation Program Report, p. ES-2.

Table 14 - Inflow/Infiltration Rehabilitation Program - Removal Goals - Note: Sources originally identified in the Sewer System Evaluations Surveys (SSES) completed in each of the four districts in 1993/94

Type	Public Infiltration % Removal (County)	Public Inflow % Removal (County)	Private Inflow % Removal (Municipalities)
New Rochelle	40%	90%	90%
Mamaroneck	60%	90%	90%
Blind Brook	60%	90%	90%

Over a two-year period (2000-2002), the County performed the following work: lined 356,000 feet of pipe, grouted 6,000 sewer laterals, waterproofed 2,500 manholes, replaced or raised 150 manholes frames and covers, excavated and replaced 300 feet of sewer pipe, and disconnected 59 catch basins.¹⁰¹ In the summer and fall of 2003 an investigation was undertaken to verify the effectiveness of the I/I Rehabilitation Program.¹⁰² The overall conclusion of the investigation work, published in an evaluation report titled Inflow/Infiltration Rehabilitation Program Effectiveness Evaluation Report, was “that the I/I Rehabilitation Program was completed properly and effectively and therefore the I/I quantities associated with these defects have been removed from the sewers *at these sources*.”¹⁰³ “However, the I/I Rehabilitation Program only targeted the I/I sources identified during the SSES.”¹⁰⁴

Therefore, the Report cautioned that:

In general, approximately half of the flow at each plant is I/I. The I/I Rehabilitation Program, although it has demonstrated to be successful and has achieved the removal goals, has *only removed 2.2-3.2 mgd in the New Rochelle (total I/I estimated at 9 mgd), 2.5 to 4.2 mad in Mamaroneck (total I/I estimated at 7 mgd) ...and 0.1 to 0.6 mgd in Blind Brook (total I/I estimated 2 mgd).*¹⁰⁵

Thus, overall the I/I Rehabilitation Program, conducted in 2000-2002, removed between 4.8 and 8 MGD of infiltration (estimated at 18 MGD).

¹⁰¹ Westchester County I/I Rehabilitation Program Report, p. ES-4.

¹⁰² Westchester County I/I Rehabilitation Program Report, p. ES-5.

¹⁰³ Westchester County I/I Rehabilitation Program Report, p. ES-6 (emphasis supplied).

¹⁰⁴ Westchester County I/I Rehabilitation Program Report, p. 4-5.

¹⁰⁵ Westchester County I/I Rehabilitation Program Report, p. 4-5 (emphasis supplied).

Notably, “[p]rivate inflow removal was the responsibility of the respective municipalities in accordance with the terms of individual Consent Orders executed between the municipalities and Westchester County. Private inflow sources included roof leader connections, driveway drains, private yard drain connections, and basement sump pump connections. Private inflow lists were compiled from the SSES Reports and given to each municipality in the New Rochelle, Mamaroneck, and Blind Brook Sewer Districts.”¹⁰⁶ “The municipalities were responsible for elimination of 90 percent of these sources by the end of 2002.”¹⁰⁷ “Municipalities submitted monthly reports to Westchester County on their progress toward the goal of 90 percent removal.”¹⁰⁸ “The work was undertaken by the individual municipalities and was required by Westchester County, to be certified as having been completed by a Professional Engineer. ... No further confirmation was undertaken.”¹⁰⁹ Independent verification or auditing was not required, raising questions as to the actual results on private inflow removal.

The Report further recommended the following actions for all the Westchester Long Island Sound Sewer Districts: “each WWTP install an automatic rain gauge, with 15 minute interval reading capability and digital storage data. The flow recording equipment at each plant should be modified to permit continuous, digitized readings. On an annual basis, the flow at each plant should be analyzed again the recorded rainfall.”¹¹⁰ Specifically for the New Rochelle Sanitary Sewage District, the following actions were recommended: “A smoke testing, weiring and CCTV [closed-circuit TV] program be undertaken in all areas not already done in the original SSES. The results of the testing can be utilized to develop a Phase II -I/I Removal Program, as well as to assess the need and extent of plant expansion required, if any.”¹¹¹

As discussed previously, the recommendations of the I/I Rehabilitation Program Report were included as permit conditions in the previous SPDES permits for the New Rochelle and Mamaroneck Sanitary Sewer Districts: in the 2002-2007 SPDES Permit for the Mamaroneck District, which included Inflow/Infiltration “Compliance Actions” in the “Schedules of Compliance”, as stated in Table 8, and in the 2003-2008 SPDES Permit for the Mamaroneck Sanitary Sewage District, as “Compliance Actions” in the “Schedules of Compliance”, described in Table 11. The recommendations are also permit conditions in the SPDES Permit for the Blind Brook Sanitary Sewage District, as “Compliance Actions” in the “Schedules of Compliance”, noted in Table 13.

¹⁰⁶ Westchester County I/I Rehabilitation Program Report, p. ES-3, 2-1.

¹⁰⁷ Westchester County I/I Rehabilitation Program Report, p. 2-1.

¹⁰⁸ Westchester County I/I Rehabilitation Program Report, p. 2-1.

¹⁰⁹ Westchester County I/I Rehabilitation Program Report, p. ES-3.

¹¹⁰ Westchester County I/I Rehabilitation Program Report, p. ES-11.

¹¹¹ Westchester County I/I Rehabilitation Program Report, p. ES-11.

2. The 2004 Consent Order

The NYSDEC and Westchester County executed another Consent Order on December 24, 2004 that described the framework and schedule to be followed to meet SPDES Permit requirements in the Long Island Sound Sanitary Sewage Districts.¹¹² An outline of the improvement program developed to address the SPDES requirements was set forth in an Engineering Plan, dated September 2006, which outlined the specific projects to be undertaken at each WWTP in order to meet the SPDES Permit discharge limits. While this Consent Order required additional I&I reductions which were supposed to “become part of, and enforceable under,” the SPDES Permits, upon information and belief, the NYSDEC did not enforce the I/I rehabilitation work but instead proceeded to negotiate a new order-on-consent.

The 2004 Consent Order called for the preparation of a “Inflow/infiltration investigation at the New Rochelle Sanitary Sewage District” by July 26, 2006,¹¹³—also known as the 2006 New Rochelle Flow Reduction Study—to follow up on the findings of the 2003 Inflow/Infiltration Rehabilitation Program Effectiveness Evaluation Report. Smoke testing and dyed water testing were used to identify sources of inflow. Flow insulation and CCTV inspections were used to identify sources of infiltration. Manhole inspections identified sources of both inflow and infiltration. There was no requirement for a follow-up a Inflow/infiltration investigation at the other Districts.

Fieldwork conducted under the New Rochelle Flow Reduction Study identified sources of both inflow and infiltration having completed the following work: smoke testing (109,430 linear feet), dyed water testing (183 tests), flow isolation (220,569 linear feet, CCTV inspection (104,459 linear feet), and manhole inspections (1,732).¹¹⁴ The findings are shown in Tables No. 15 and 16, below, Total Inflow Identified, and Total Infiltration Identified, respectively.

Table 15 - New Rochelle Flow Reduction Study, Total Inflow Identified

Type	No. Sources	Estimated Inflow - in gallons (g)
Private Inflow	25	24,000 g
Public Inflow	10	200,000 g
Manholes	29	145,000 g
Total Inflow Identified		369,000 gallons

¹¹² NYSDEC, Consent Order 3-20040603-130, dated December 24, 2004.

¹¹³ See NYSDEC, 2008 Consent Order, Appendix A, Items 2, 6, and 18.

¹¹⁴ New Rochelle Flow Reduction Study, p.ES-1, ES-2.

Table No. 16 - New Rochelle Flow Reduction Study, Total Infiltration Identified

Type	No. Sources	Estimated Infiltration - in gallons per day (gpd)
Pipeline Infiltration	421	1,297,237 gpd
Manholes	153	107,845 gpd
Total Inflow Identified		1,405,082 gpd

Notably, the New Rochelle Flow Reduction Study concluded:

“The base flow to the New Rochelle WWTP is estimated at approximately 7.5 mgd [million gallons per day]. The 2005 annual average flow to the WWTP was 15.60 mgd. Therefore, 8.1 mgd, or in excess of 50% of the plant flow, was I/I. While the original I/I Rehabilitation Program removed between 2.2 and 3.3 mgd of infiltration and reduced inflow induced maximum flows by 30 percent, there is still a significant I/I problem within the collection system. In addition to the publicly owned collection systems, additional sources of I/I are [private sewer] laterals which connect to the system and basement sump pumps.”¹¹⁵

As a result, the New Rochelle Flow Reduction Study recommended the following actions:

(1) Meet with municipalities in the New Rochelle Sewage District, including the City of New Rochelle, the Village of Larchmont, the Village of Pelham Manor, and the Town of Mamaroneck, to determine their overall approach to the issue of I/I and request that a long-term plan be developed to address I/I removal from their system, including addressing basement sump pumps; and (2) Provide the municipalities with the information from the New Rochelle Flow Reduction Study.¹¹⁶

The New Rochelle Flow Reduction Study estimated that the I/I rehabilitation work to cure I/I defects outlined in Tables 15 and 16 above, “would have a project cost of \$7,325,000 in December 2007 \$.”¹¹⁷ Although the I/I rehabilitation work was to “become part of, and enforceable under,” the SPDES Permit, upon information and belief, the NYSDEC did not enforce the I/I rehabilitation work to cure I/I defects outlined in Tables 15 and 16. Instead, the County and NYSDEC proceeded to negotiate a new order-on-consent.

¹¹⁵ New Rochelle Flow Reduction Study p. ES-3, ES-4 (emphasis supplied).

¹¹⁶ New Rochelle Flow Reduction Study p. ES-4..

¹¹⁷ New Rochelle Flow Reduction Study, p. ES-3.

3. The 2008 Consent Order

In 2008, a revised Consent Order (“2008 Consent Order”) was negotiated to address violations of the SPDES Permits at various WWTPs and continue the Inflow/Infiltration programs. As stated in the 2008 Consent Order, “[d]ischarges from the Westchester County WWTPs have resulted in on-going contraventions of the State’s WQS [Water Quality Standards] pursuant to ECL § 17-0501, and DMRs submitted for the Westchester County WWTPS reflect that the facilities failed to comply with the provisions of their SPDES permits by having *discharges in excess of the flow and effluent limits contained in the permits*.”¹¹⁸ The 2008 Order on Consent, which superseded the terms of the December 24, 2004 Consent Order, extended the compliance deadlines and provides for a phased implementation of the nitrogen discharge limits.¹¹⁹ A Consent Order Modification, in 2013, adjusted the County’s obligation with respect to deadlines for the Mamaroneck WWTP, and included a program supporting clean beaches.

The 2008 Consent Order specifically stated that “[t]he New Rochelle WWTP is not consistently meeting the SPDES permit limits for flow, Carbonaceous Biological Oxygen Demand (‘CBOD’) percent removal, and Total Suspended Solids (‘TSS’) percent removal.”¹²⁰ Therefore, Westchester County was obligated to “undertake improvements at the New Rochelle WWTP in order to meet the SPDES Permit Limits for flow, CBOD percent removal, and TSS percent removal.”¹²¹

Improvements at the New Rochelle WWTP to comply with SPDES Permit requirements were addressed in two distinct capital projects: the Composite Performance Implementation and Plant Expansion, commonly referred to as the Non-BNR Project, and the Biological Nutrient Removal Facilities project, also known as the BNR Project. The 2008 Consent Order (as modified) requires that both these projects reach substantial construction completion by July 30, 2014. As of March 31, 2015, both projects were about 96% completed.

As stated in Westchester County’s, Quarterly Report No. 25, required under Article VI of the 2008 Consent Order (including statements as to compliance with the provisions of the 2008 Order on Consent from January 1, 2015 to March 31, 2015):

The New Rochelle WWTP improvements design work was conducted in two different projects, the SPDES Improvements project [the Non-BNR] and the BNR project and is now being implemented under separate contracts. The SPDES Improvements project (the New Rochelle WWTP Composite Performance

¹¹⁸ NYSDEC, 2008 Consent Order, p. 5 (emphasis supplied).

¹¹⁹ NYSDEC, 2008 Consent Order.

¹²⁰ NYSDEC, 2008 Consent Order, p. 4.

¹²¹ NYSDEC, 2008 Consent Order, p. 6.

Implementation and Plant Expansion project) consists of secondary treatment upgrades (CBOD and TSS); upgrade of the solids handling, storage and dewatering system; and upgrades required to treat a new SPDES Permit flow limit of 20.6 mgd. The Consent Order construction completion date is July 30, 2014. Construction commenced in June 2010 and is ongoing. **As of March 31, 2015, 176.4% of the Contract Time has elapsed, and it is estimated that 96.2% of the contract work has been completed.** The Biological Nutrient Removal Facilities New Rochelle Wastewater Treatment Plant Construction Contract completion date set at May 18, 2015. Construction commenced in July, 2011 and is ongoing. **As of March 31, 2015, 96.6% of the Construction Time has elapsed and it is estimated that 94.3% of the contract work has been completed.**¹²²

Improvements at the Mamaroneck WWTP to comply with SPDES Permit requirements were completed in 2013 and 2014.¹²³ Upgrades at the Port Chester WWTP to comply with SPDES Permit, required work at the Rotating Biological Contractors and was completed in 2014.¹²⁴

To address inflow and infiltration, the 2008 Order on Consent required Westchester County to “Provide documentation to [NYS]DEC that Respondent gained access to rights to install flow meters in the tributary communities” by April 1, 2008, and to “Develop flow reduction strategy” by October 1, 2013.¹²⁵ To comply with such requirements Westchester County undertook the Long Island Sound Flow Monitoring Program, a 2-year evaluation of flows in the Westchester Sanitary Sewer Districts.¹²⁶

The Long Island Sound Flow Monitoring Program’s methodology was described, as follows:

The Long Island Sound Flow Monitoring Program included 82 flow meters deployed at strategic locations to isolate and measure flow rate from each of the 11 municipalities that discharge sewage into the four Long Island Sound Sanitary Sewer Districts (Blind Brook, Mamaroneck, New Rochelle, and Port Chester). ... Twelve rain gages were also installed throughout the study area to measure rainfall. Flow and rainfall data were collected continuously over a two-year period from April 2009 through March 2011. The flow meters measured depth and velocity of the sewage at 15-minute intervals throughout the monitoring period.

¹²² Westchester County, Quarterly Report No. 25, p. 3 (emphasis in original).

¹²³ Westchester County, Quarterly Report No. 25, pp. 2-3.

¹²⁴ Westchester County, Quarterly Report No. 25, pp. 3.

¹²⁵ See NYSDEC, 2008 Consent Order, Appendix A, Items 6, and 18.

¹²⁶ Westchester County, Flow Monitoring Program Report.

This data was used to calculate daily average flow rate for each municipality for each day during the 2-year monitoring period.

Census data from 2010 was used to estimate population in each of the 11 municipalities that discharge into the Long Island Sound sewer districts. Per capita flow rates (gallons of sewage per person per day, gpcd) were calculated based on the flow rates and population estimates. An allowance for net influx of daytime commuters was incorporated into the per capita flow rates in accordance with provisions in the Environmental Facilities Sewer Act.¹²⁷

The Flow Monitoring Program analyzed per capita flow rates:

The main objective of this flow monitoring program was to determine which, if any, municipalities exceed the 150 gallons per capita per day [gpcd] flow rate limit. ... The monitoring program lasted for 730 consecutive days. All municipalities exceeded the 150 gpcd, ranging from a low of 12% of the days during the monitoring program to a high of 61% of the days during the monitoring program.¹²⁸

The Flow Reduction Monitoring Report found that: "The 11 municipalities exceeded the limit between 12% and 61% of the time [of a total of 730 days]."¹²⁹ The worst offender was the Village of Mamaroneck with 448 days or 61%, followed by Scarsdale (433 days, 59%), Larchmont (432 days, 59%), Pelham Manor (410 days, 56%), New Rochelle (363 days, 50%), Port Chester (336 days, 46%), Rye Brook (221 days, 30%), Town of Mamaroneck (203 days 28%), White Plains (107 days, 15%), Rye (95 days, 13%) and Harrison (88 days, 12%). The Summary of Daily Exceedances is provided below in Figure 3.¹³⁰

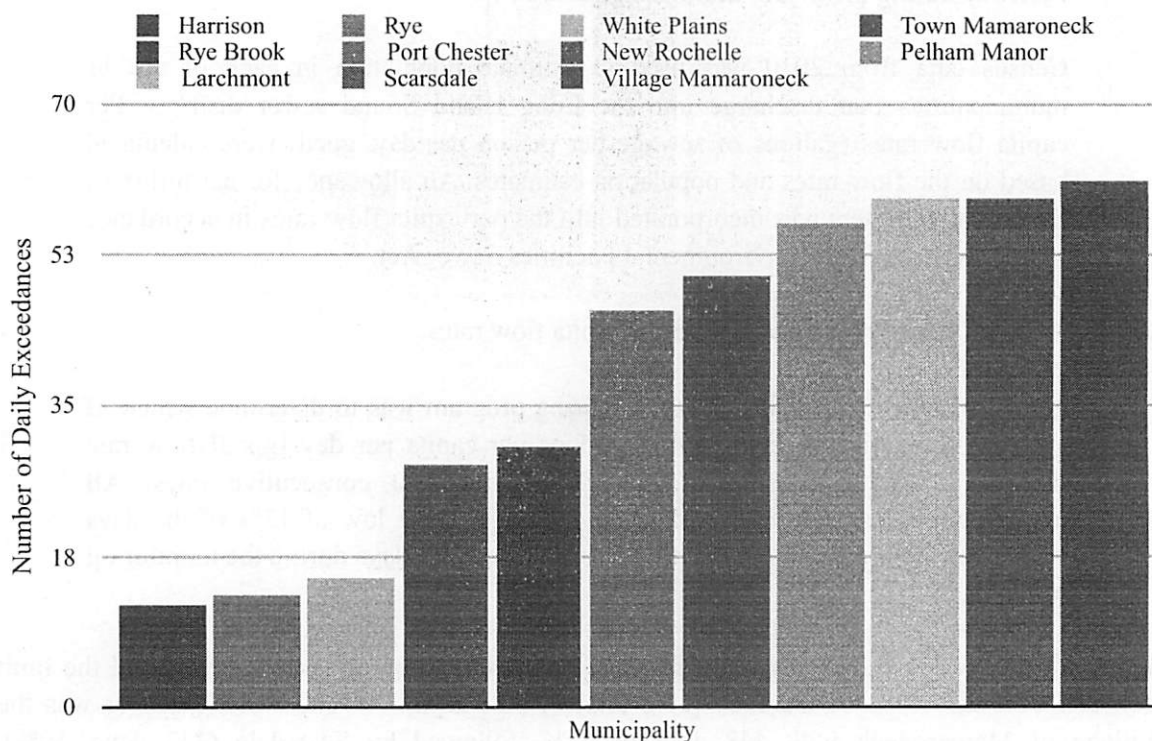
¹²⁷ Westchester County, Flow Monitoring Program Report, p. ES-3.

¹²⁸ Westchester County, Flow Monitoring Program Report, p. ES-8.

¹²⁹ Westchester County, Flow Monitoring Program Report, p. 8.2.

¹³⁰ Westchester County, Flow Monitoring Program Report, Figures ES-1& 8-1.

Figure 3 - Long Island Sound Flow Monitoring Program (2009-2011) - Excessive I/I



Overall, the Report concluded that "I/I in the Westchester County Sewer Districts is a significant problem, contributing up to 50% of the flow to the WWTPs. It is to be expected that the aging sewer systems will continue to deteriorate and I/I will continue to increase."¹³¹

Further, the Flow Reduction Monitoring Report noted the serious implications of I/I in the Long Island Sanitary Sewer Districts:

"I/I has significant impacts on both the sewage collection system and the WWTPs including:

- decreased conveyance capacity in the piping system resulting in less capacity available for new development
- backups in and overflows from the sewer system
- increased pumping costs
- increased capital costs and operation and maintenance costs (O&M) at the WWTPs

¹³¹ Westchester County, Flow Monitoring Program Report, Figures ES-1 & 8-1.

- decreased treatment capability at the WWTPs, particularly at the new nitrogen facilities, possibly requiring additional capital expenditures.”¹³²

The Flow Monitoring Program Report and the proposed Flow Reduction Strategy Plan was approved by the NYSDEC in a letter dated June 25, 2013. The 2008 Consent Order states: “[i]f DEC approves the submission in whole, the submission shall be incorporated into this Order and Respondent shall implement it, in accordance with its schedules and term, as approved.”¹³³ Thus, as WCDEF admits, “[o]nce it was accepted by NYSDEC it became part of the 2008 Order on Consent”.¹³⁴

The Flow Reduction Strategy Plan including a schedule for implementation in 5 steps, as follows:¹³⁵

Step 1—Municipality Negotiations (June 1, 2013 - July 1, 2014): “Westchester County enter[s] into negotiations with the 11 municipalities to get concurrence from each municipality to develop a program to address the excessive I/I in their sewer systems.”

Step 2—Preparation of the Evaluation Program Development (July 1, 2014 - April 1, 2015): “Each municipality will develop municipality specific scope of the Evaluation Program which will entail flow metering, flow isolation, smoke testing, CCTV inspection, lateral inspection, house to house inspections and analysis of field data collected to identify a remedial program to reduce infiltration/inflow within each municipality. The Evaluation Program developed by each municipality should be submitted to Westchester County and NYSDEC for review.”

Step 3—Review of the Evaluation Program Development (April 1, 2015 - September 1, 2015): 6-month period for Westchester County and NYSDEC to review the submission.

Step 4—Evaluation Program Implementation (September 1, 2015 - May 1, 2017): “Each municipality will implement the Evaluation Program. Prepare a Flow Reduction Strategy for submittal to Westchester County and NYSDEC which identifies the necessary repairs, develop a construction cost estimate for the Program and outline the design and construction schedule for implementation.” The Evaluation must include the following:

Step 4.1—“Evaluation Program Scope - the specific locations in the collection system to be targeted for evaluation, the evaluation methodologies to be utilized, the manner in which public and private I/I will be addressed and any proposed parallel programs should all be detailed.”

¹³² Westchester County, Flow Monitoring Program Report, Figures ES-1 & 8-1.

¹³³ See NYSDEC, 2008 Consent Order, section V.(C), p. 14.

¹³⁴ WCDEF Letter, April 1 2014, p. 2.

¹³⁵ See Westchester County, Flow Monitoring Program Report, pp. ES-9, ES-10, Figure ES-2, 10-2, 10-3, Figure 10-1.

Step 4.2—"Implementation schedule for the entire program – the schedule for the entire I/I reduction program should be shown in as much detail as is feasible. The schedule should include, at a minimum, evaluation and quantification of excessive I/I, rehabilitation design, construction, post-rehabilitation verification, and any other parallel programs such as public education, local law changes, and other programs proposed by the municipality."

Step 4.3—"Schedule for sewer rehabilitation construction – each municipality should prepare a detailed schedule showing the anticipated start, duration, and completion of the rehabilitation construction. Individual phases of the program should be shown to the extent possible."

Step 4.4—"Methods to be used for post-rehabilitation verification – the Program Outline should include specific steps that each municipality will use to verify and certify that the excessive I/I has been reduced and that the municipality is in compliance with the Environmental Facilities Sewer Act."

Step 5—Final Acceptance of the Program (August 1, 2017): "Following the submittal of the Evaluation Program Flow Reduction Strategy by the 11 municipalities, which will outline the extent, cost and schedule of the rehabilitation programs, Westchester County and NYSDEC will meet to review and discuss the Flow Reduction Strategy and either accept the programs and associated schedules, or request modifications and/or clarifications. Final acceptance of all 11 programs and the associated schedules will be conveyed to the municipalities by Westchester County and NYSDEC by August 1, 2017."

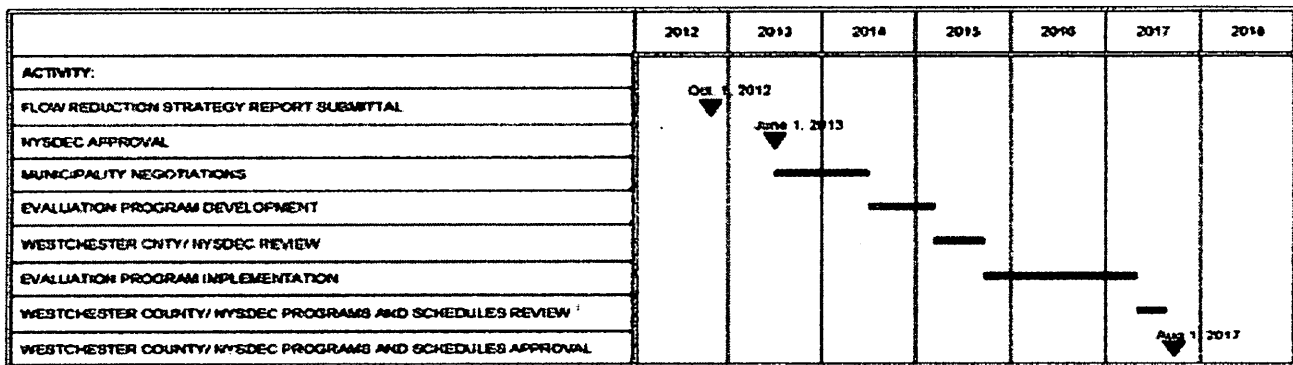
See Flow Reduction Strategy, Proposed Schedule, Figure ES-2, below.

FIGURE ES-2

WESTCHESTER COUNTY
 DEPT. OF PUBLIC WORKS & TRANSPORTATION
 DEPT. OF ENVIRONMENTAL FACILITIES

LONG ISLAND SOUND SEWER DISTRICTS
 FLOW REDUCTION STRATEGY

PROPOSED SCHEDULE



1. The schedule of implementation for the proposed flow reduction strategy is subject to change.

LEGEND

- WESTCHESTER COUNTY/ NYSDEC REVIEW
- WESTCHESTER COUNTY/ NYSDEC APPROVAL

REVISED 6/15/2015

WESTCHESTER COUNTY AND NYSDEC WILL REVIEW AND DISCUSS ALL THE PROPOSED PROGRAMS AND SCHEDULES SUBMITTED TO THE MUNICIPALITIES AND APPROVE THEM AS NECESSARY BY THE EXPIRATION DATE OF AUGUST 1, 2017.

SEVIN
 Sevin Engineers, P.C.

With respect to the Flow Reduction Strategy Plan, the Quarterly Report No. 25, reported that:

Flow Reduction data collection and evaluation of the data collected has been completed. The Flow Reduction Strategy Plan was submitted timely to NYSDEC on September 28, 2012, as required by the Consent Order, by October 1, 2012.

A meeting between NYSDEC and Respondent to discuss outstanding issues in the Flow Monitoring Report was held on May 10, 2013. Resolution of the outstanding issues was agreed to, and on June 13, 2013 Respondent submitted the final Flow Monitoring Report to NYSDEC. In a letter dated June 25, 2013, NYSDEC approved the Flow Monitoring Report.

On January 7, 2014 Respondent emailed a memorandum to each municipality with a sanitary sewage collection system tributary to one or more of its Long Island Sound wastewater treatment plants reminding the municipality of its obligation under the Respondent's 'County Sewer Act' to limit inflow and infiltration by ongoing maintenance of its collection system and to report annually to Respondent on its maintenance efforts. The memorandum explicitly referenced the *Long Island Sound Flow Monitoring Report*.

On April 1, 2014 Respondent issued a written request to each municipality with a sanitary sewage collection system tributary to one or more of its Long Island Sound wastewater treatment plants to comply with the schedule for set forth in the Long Island Sound Flow Monitoring Report and to attend meetings to discuss its plans to identify and reduce excess inflow and infiltration in its collection system would be scheduled [sic].

Meetings have now been held with all of the twelve municipalities within the Respondent's four Long Island Sound sewer districts and draft Intermunicipal Agreements requiring actions to identify and reduce excess inflow and infiltration consistent with the schedule set forth in the Long Island Sound Flow Monitoring Report are being drafted and circulated. During the reporting period Respondent also refined it's tentative agreement with the four municipalities within the New Rochelle Sewer District to take action to identify and reduce excess inflow and infiltration consistent with the schedule set forth in the Long Island Sound Flow Monitoring Report as a result of Respondent's receipt of NYSDEC's draft consent order regarding the continued use of the two Overflow Retention Facility discharge outfalls within the district.¹³⁶

¹³⁶ See Westchester County, Quarterly Report No. 25, p. 4 (emphasis in original).

Significantly, the January 7, 2014 letter to the municipalities in the New Rochelle Sanitary Sewage District stressed the importance to the Flow Reduction Strategy Plan, stating that “[t]he importance of compliance with the County Sewer Act is critical for two reasons:”

*The Long Island Sound Flow Monitoring Report ... showing that, on average, influent flow to each of the County’s four sewage treatment plants discharging to Long Island Sound is approximately 50% stormwater - inflow and infiltration - not sanitary sewage. ...The County’s SPDES Permit for each sewage treatment plant, including the New Rochelle Wastewater Treatment Plant, requires the County to enforce the County Sewer Act requirements necessary to remove excessive inflow and infiltration.*¹³⁷

The County ‘Flint Avenue and Cherry Avenue SSP Control Facility’, located in Flint Park, Larchmont and the County ‘Whitewood Avenue SSP Control Facility’, located in Neptune Park, New Rochelle, (each also referred to as Overflow Retention Facility) are now permitted by the New Rochelle Wastewater Treatment Plant SPDES Permit to discharge through outfalls to Long Island Sound. However, the SPDES Permit explicitly states that these discharges must be eliminated by August 1, 2014. ... the County is required to comply with the requirements of its SPDES Permit on that date. It is imperative that municipalities act to remove excess flows in their respective sanitary sewer systems. Further, ... the County Sewer Act also requires each municipality to file annually, by September first, the municipality’s report on maintenance and repairs of its sewer system with the County Commissioner of Environmental Facilities. The Report is intended to insure required efforts by municipal governments to remove excess inflow and infiltration from its sanitary sewer system are continuing. ... It is imperative that the Annual Report be timely filed with the WCDEF Commissioner in order to effectively manage the County sewage treatment system.¹³⁸

The April 1, 2014, letter by WCDEF to the municipalities within the Port Chester, Blind Brook, Mamaroneck, and New Rochelle Sanitary Sewer Districts, again stressed the importance of the Flow Reduction Strategy Plan and its schedule for implementation. This letter stated:

At this time the County intends to contact each municipality to schedule a meeting to insure that it understands the nature of the obligations discussed in this memorandum and is prepared to begin negotiations with the County so that the

¹³⁷ WCDEF Letter, January 7, 2014, p. 1 (emphasis in original).

¹³⁸ WCDEF Letter, January 7, 2014, pp. 1 & 2.

administrative consent order for it to design an [sic] sewer system evaluation program will be entered into with the County by July 1, 2014.¹³⁹

VII. Identification of the Specific Standards, Limitations, Permit Conditions and Orders that have been Violated and the Activities Alleged to Constitute CWA Violations

A. Violation of the CWA Section 301(a), 33 U.S.C. § 1311(a), or, alternatively, the CWA Section 402, 33 U.S.C. § 1342, for Illicit Discharges from the Flint Ave & Cherry Ave - SSO Control Facility (Outfall No. 3, Overflow Retention Facility) in the New Rochelle Sanitary Sewage District

In December 2014—as set forth above in Table 6 - Flint Ave & Cherry Ave - SSO Control Facility (Outfall No. 3) - Discharges 2008-2015 - NYSDEC SPDES Permit No. NY-0026697—Westchester County has, as a result of discharges from the Flint Ave & Cherry Ave - SSO Control Facility, Outfall 003, discharged sanitary sewage directly or indirectly into waters of the United States and waters of the New York State in contravention of the CWA Section 301(a), 33 U.S.C. § 1311(a) and New York’s ECL, Article 17, by discharging pollutants without obtaining a permit in accordance with CWA Section 402, 33 U.S.C. § 1342, or the ECL Article 17 or, alternatively, by violating the terms of the SPDES Permit which states: “The permittee shall either eliminate discharges from the ORF or comply with the effluent limitations specified in 40 CFR Part 133 by August 1, 2014.”¹⁴⁰

On that occasion—on December 9th and 10th of 2014—Westchester County discharged 0.92 MGD and Coliform levels of 107,331/100 ml into Long Island Sound.¹⁴¹ Notably, the County has been well aware of this prohibition in the SPDES Permit for over 13 years, as this deadline was inserted in both the previous (2002-2007) and in the current (2007-2011) SPDES Permits for the New Rochelle Sanitary Sewage District, SPDES Permit No. NY-0026697.

As discussed above, discharges from this SSO Control Facility or ORF do not meet secondary treatment levels. 40 CFR Part 133 provides the level of effluent quality attainable through the application of secondary or equivalent treatment.¹⁴² Secondary treatment requires minimum level of effluent quality attainable by secondary treatment in terms of the parameters for biochemical oxygen demand, total suspended solids and pH.¹⁴³

¹³⁹ WCDEF Letter, April 1, 2014, p. 1.

¹⁴⁰ See SPDES Permit, Interim Permit Limits, levels and Monitoring - Retention Facilities, page 11 of 22.

¹⁴¹ Westchester County, New York, Department of Environmental Facilities, New Rochelle Sanitary Sewer District, Overflow Retention Facility, Discharge Monitoring Report, 2014 Annual Summary (Attached hereto as Exhibit 10)

¹⁴² See 40 CFR §133.100.

¹⁴³ See 40 CFR §133.102.

The ORF provides treatment in the form of chlorine disinfection and oil and grease removal, but does not achieve secondary treatment before discharging into Long Island Sound.¹⁴⁴ Discharges without secondary treatment fail to ensure compliance with applicable water quality standards and contributes to ongoing water quality challenges, including hypoxia and water-borne pathogens. The ORF discharges adversely affect human health and the environment. The ORF is located in a highly urbanized area, and discharge to receiving waters used extensively for both contact and non-contact water recreation.

The County has acknowledged, in a memorandum to the municipalities in the New Rochelle Sanitary Sewer District (City of New Rochelle, Town of Mamaroneck, Village of Larchmont, and Village of Pelham Manor), dated January 7, 2014, that “the SPDES Permit explicitly states that these discharges must be eliminated by August 1, 2014”¹⁴⁵ and that “the County is required to comply with the requirements of its SPDES Permit on that date. It is therefore imperative that municipalities act to remove excess flow in their respective sanitary sewer systems.”¹⁴⁶

At all times relevant, Westchester County has owned, managed, and operated the New Rochelle Sanitary Sewer District including the collection, treatment, pumps and ORFs of sewage subject to the SPDES Permit. Long Island Sound is “navigable waters” of the United States, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7). Sewage is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6). The County is a “person” for purposes of section 505 of the Act, 33 U.S.C. § 1365, and is subject to a CWA citizen suit. The ORF is a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).

Westchester County has taken inadequate affirmative steps to eliminate these ORF discharge violations, and thus these violations will continue in the future. By spilling or discharging sewage from the ORF to waters of the United States and waters of the New York State beyond August 1, 2014, WCDEF has violated the CWA Section 301(a), 33 U.S.C. § 1311(a) and New York’s ECL Article 17, by discharging pollutants without obtaining a permit in accordance with CWA Section 402, 33 U.S.C. § 1342, or the ECL Article 17, or, alternatively, by violating the terms of the SPDES Permit which states: “The permittee shall either eliminate discharges for the ORF or comply with the effluent limitations specified in 40 CFR Part 133 by August 1, 2014.”¹⁴⁷ Each day since August 1, 2004 that the County caused or contributed to, or continues to cause or contribute to, discharge from the ORF is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

¹⁴⁴ NYSDEC, SPDES Permit No. NY-0026697, Interim Permit Limits, levels and Monitoring - Retention Facilities, page 11 of 22).

¹⁴⁵ WCDEF Letter, January 7, 2014, p.1.

¹⁴⁶ WCDEF Letter, January 7, 2014, p. 2.

¹⁴⁷ NYSDEC, SPDES Permit No. NY-0026697, Interim Permit Limits, levels and Monitoring - Retention Facilities, page 11 of 22.

B. Violations of SPDES Permit Conditions and of the Order on Consent Case No. CO 3-20080730-65 for Failure to Enforce the County Sewer Act in the New Rochelle, Mamaroneck, Blind Brook, and Port Chester Sanitary Sewer Districts

Westchester County is failing to enforce the County Sewer Act, in particular Sections 824.41, 824.71, and 824.72 that govern flows, loads and discharges in the New Rochelle, Mamaroneck, Blind Brook and Port Chester Sanitary Sewer Districts. The New Rochelle Sanitary Sewage District comprises the County trunk (collection) sewer system, including five pump station (with emergency bypass), two sanitary sewage overflow control facilities—also the ORFs—and the WWTP, all regulated under SPDES Permit No. NY-0026697. The Mamaroneck District comprises the County trunk sewer system, including three pump station (with emergency bypass) and the WWTP, all regulated under SPDES Permit No. NY-0026701. The Blind Brook District comprises the County trunk sewer system, including a pump station (with emergency bypass) and the WWTP, all regulated under SPDES Permit No. NY-0026719. The Port Chester District comprises the County trunk sewer system and the WWTP, all regulated under SPDES Permit No. NY-00226786.

The SPDES Permits for the New Rochelle, Mamaroneck, and Blind Brook Sanitary Sewer Districts, in their Schedule of Compliance, explicitly include the “Inflow/Infiltration Program”, and require monitoring of inflow and infiltration levels and submission of annual summary reports to the NYSDEC.¹⁴⁸ The Inflow and Infiltration Program—which requires that the permittee to enforce the County Sewer Act—is a condition of the SPDES Permits that must be vigorously pursued in sanitary sewer systems with active overflows, such as the Westchester Sanitary Sewer Districts with overloaded and complex systems of pump stations (with emergency bypasses) that may, in such circumstances, discharge raw sewage into Long Island Sound, and even two sanitary sewage overflow control facilities or ORFs that may, in heavy rainstorms, discharge partially-treated sewage into Long Island Sound.

Furthermore, these Districts constitute POTWs as defined by CWA section 212, 33 U.S.C. § 1292, and 40 C.F.R. § 403.3(o), and 6 NYCRR § 750-1.2 (68). As noted above, New York SPDES Program, under 6 NYCRR §750-2.9, includes an obligation to “enact, maintain and enforce or cause to be enacted, maintained and enforced up-to-date and effective sewer use law in all parts of the POTW service area. Such enactment and enforcement shall include intermunicipal 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.”¹⁴⁹

¹⁴⁸ See NYSDEC, SPDES Permit No. NY-0026697, Schedule of Compliance, page 20 of 22; NYSDEC, SPDES Permit No. NY-0026701, Schedule of Compliance, page 16 of 18; NYSDEC, SPDES Permit No. NY-0026719, Schedule of Compliance, page 16 of 18.

¹⁴⁹ 6 NYCRR § 750-2 (4), Additional Conditions Applicable to a Publicly Owned Treatment Works (POTWs).

As per regulatory definitions, Westchester County's Sanitary Sewer District, including its WWTP and ORFs, are subject to 6 NYCRR §750-2.9. The County has enacted a sewer use law, which is the County Sewer Act.¹⁵⁰ Specifically, the County Sewer Act § 824.41(2) prohibits municipalities using the county trunk sewers "from allowing stormwater and groundwater to enter the tributary sewer systems within their borders through excessive infiltration, inflow and by illegal connections from home, business or other property owners made to the tributary sewer systems within their borders."¹⁵¹ The County Sewer Act § 824.71(2) prohibits extraneous flows due to inflow and infiltration by stormwater from entering a separate sanitary sewer system. Further, the County Sewer Act § 824.72, prohibits the introduction by municipalities of excessive inflow and infiltration into the county trunk sewer system. As defined in the County Sewer Act, "[e]xcessive infiltration and inflow means the quantity of flow entering the county sewer system which is greater than 150 gallons per capita per day [gpcd] for the population served by the tributary sewer systems located within a municipality's borders."¹⁵² All municipalities in the Westchester Sanitary Sewer Districts have extraneous flows due to inflow and infiltration and exceeded the 150 gpcd during the 2009-2011 flow monitoring study that was approved by the NYSDEC.¹⁵³

The enforcement powers and duties under the County Sewer Act are clear. Under Section 824.77, it shall be a civil violation of the County Sewer Act to violate any of the provisions of sections 824.41(2); 824.61; 824.71 and 824.72. Any person or municipality which violates these provisions shall be subject to a penalty of not to exceed \$25,000.00 per day for each violation. It shall be a separate violation under this section for each day that each violation may continue. If a municipality or person has been found to be liable, pursuant to this chapter, for three separate violations, it shall be subject to a maximum penalty of not to exceed \$50,000.00 per day for each violation, upon its being found liable for the fourth, fifth or sixth violation. For each additional group of three subsequent violations, the maximum penalty shall continue to double (e.g. for violations seven through nine—a penalty of not to exceed \$100,000.00). In no event shall a maximum penalty for any single violation exceed \$200,000.00 per day. In addition, such person or municipality may be enjoined from continuing such violation.¹⁵⁴

Under Section 824.72., a municipality shall be held liable and subject to a civil penalty after an administrative hearing in accordance with sections 824.74, 824.75, 824.76, 824.77, 824.78 and 824.79 for the violation of introducing excessive infiltration and/or inflow into the county trunk

¹⁵⁰ Westchester County Administrative Code, Chapter 824.

¹⁵¹ Westchester County Administrative Code, Section 824.41(2).

¹⁵² Westchester County Administrative Code, Section 824.72.

¹⁵³ Westchester County, Flow Monitoring Program Report, p. ES-8.

¹⁵⁴ Westchester County Administrative Code, Section 824.77(1)&(2).

sewer system at each connection to the county trunk sewer system.¹⁵⁵ Failure by a municipality to comply with any of the prohibitions, standards and/or requirements set forth in this Section shall constitute a separate violation for each and every day of noncompliance and may subject a municipality to penalties set forth in section 824.77.¹⁵⁶

Excessive inflow and infiltration in the Westchester Sanitary Sewer District was established over a decade ago. The 2003 Inflow/Infiltration Rehabilitation Program Effectiveness Evaluation Report, stated that “[i]n general, *approximately half of the flow at each plant is I/I*. The I/I Rehabilitation Program, although it has demonstrated to be successful and has achieved the removal goals, has *only removed 2.2-3.2 mgd in the New Rochelle (total I/I estimated at 9 mgd), 2.5 to 4.2 mad in Mamaroneck (total I/I estimated at 7 mgd) ...and 0.1 to 0.6 mgd in Blind Brook (total I/I estimated 2 mgd.*”¹⁵⁷ The 2006 New Rochelle Flow Reduction Study found that “[t]he base flow to the New Rochelle WWTP is estimated at approximately 7.5 mgd. The 2005 annual average flow to the WWTP was 15.60 mgd. Therefore, 8.1 mgd, or in excess of 50% of the plant flow, was I/I.”¹⁵⁸

These findings were subsequently confirmed in the 2013 Flow Monitoring Program Report, which concluded both that “I/I in the Westchester County Sewer Districts is a significant problem, contributing up to 50% of the flow to the WWTPs.”¹⁵⁹ The 4 municipalities in the New Rochelle Sanitary Sewer District exceeded the limit between 28% and 59% of the time [of a total of 730 days].¹⁶⁰ The worst offender was the Village of Larchmont (432 days, 59%), Pelham Manor (410 days, 56%), New Rochelle (363 days, 50%), and, on the lower end was the Town of Mamaroneck (203 days 28%). The municipalities in the Mamaroneck Sanitary Sewer District exceeded the limit between 12% and 59% of the time.¹⁶¹ The worst offender was the Village of Mamaroneck (448 days, 61%), on the lower end was the Town/Village of Harrison (88 days 12%). Similarly, the municipalities in the Blind Brook Sanitary Sewer District have extraneous flows due to inflow and infiltration, including Rye (95 days, 13%) and Rye Brook (221 days, 30%).¹⁶² Also, the Village of Port Chester has extraneous flows due to inflow and infiltration

¹⁵⁵ Westchester County Administrative Code, Section 824.72(1). Section 824.74 provides “Authority of commissioner; administrative enforcement process; notice of violation; formal hearings.”

¹⁵⁶ Westchester County Administrative Code, Section 824.72(8).

¹⁵⁷ Westchester County I/I Rehabilitation Program Report, p. 4-5 (emphasis supplied).

¹⁵⁸ New Rochelle Flow Reduction Study p. ES-3, ES-4.

¹⁵⁹ Westchester County, Flow Monitoring Program Report, pp.ES-1, ES-2.

¹⁶⁰ Westchester County, Flow Monitoring Program Report, p. 8.2.

¹⁶¹ Westchester County, Flow Monitoring Program Report, p. 8.2.

¹⁶² Westchester County, Flow Monitoring Program Report, p. ES-8.

(336 days, 46%). The Summary of Daily Exceedances is provided in Figure 1.¹⁶³ These findings became part of the 2008 Order on Consent on June 25, 2013.

Accordingly, the County is failing to achieve the purposes of the Sewer Act, including:¹⁶⁴

(1) To prohibit excessive volumes and/or inordinate rates of flow of sewage and wastes into the county trunk sewer system and all tributary sewer systems.¹⁶⁵

(2) To address problems of inflow and infiltration from the tributary systems by compelling municipalities to fix and maintain the tributary sewer systems within their borders and to take immediate action to reduce extraneous flows of water due to infiltration, illegal inflow and illegal stormwater connections to tributary sewer systems within a municipality's borders which are adversely impacting upon many County POTW treatment plants in their ability to treat waste, comply with their SPDES permits, and to protect and enhance the local environment.¹⁶⁶

Specifically, the County has failed to enforce the key provision of the County Sewer Act that govern flows, loads and discharges to the Westchester Sanitary Sewer District required by the SPDES Permit conditions:

First, the County Sewer Act § 824.41(2) that prohibits municipalities using the county trunk sewers "from allowing stormwater and groundwater to enter the tributary sewer systems within their borders through excessive infiltration, inflow and by illegal connections from home, business or other property owners made to the tributary sewer systems within their borders."¹⁶⁷ Second, the County Sewer Act § 824.71(2) that prohibits extraneous flows due to inflow and infiltration by stormwater from entering the systems in the Westchester Sanitary Sewer Districts.

Third, the permittee has failed to enforce the County Sewer Act § 824.72, which specifically provides:

(1) A municipality within the jurisdiction of the County of Westchester shall be held liable under the Sewer Act for the violation of introducing excessive infiltration and/or inflow into the county trunk sewer system at each connection to the county trunk sewer system.¹⁶⁸

¹⁶³ Westchester County, Flow Monitoring Program Report, Figures ES-1& 8-1.

¹⁶⁴ Westchester County Administrative Code, Section 824.11.

¹⁶⁵ Westchester County Administrative Code, Section 824.11(1).

¹⁶⁶ Westchester County Administrative Code, Section 824.11(2).

¹⁶⁷ Westchester County Administrative Code, Section 824.41(2).

¹⁶⁸ Westchester County Administrative Code, Section 824.72 (1).

(2) Municipalities shall be required to make any repairs to tributary sewer systems within their borders that are specifically directed by the Commissioner of Environmental Facilities, as may be required by him to insure compliance with any federal or State law, regulation or permit governing the operation of a county POTW that services a municipality.¹⁶⁹

(3) Municipalities shall have a separate and distinct obligation to take immediate action to discover any illegal connections to the tributary sewer systems within their borders and to take immediate action to insure that such illegal connections are disconnected. Municipalities shall also undertake a program to insure that illegal connections are not reconnected in the future and that no new illegal connections are made to the sanitary sewers.¹⁷⁰

(4) Municipalities shall have a continuing obligation to maintain and repair the tributary sewer systems within their borders such that they comply with the standards set forth in this section and shall annually file copies of all plans for such maintenance and repair program with the Commissioner of Environmental Facilities by September first of each year.¹⁷¹

In sum, Westchester County fails to enforce proven noncompliance of inflow and infiltration by the municipalities in the Westchester Sewer Districts since June 25, 2013 when the 2013 Flow Monitoring Program Report became part of the 2008 Consent Order. Pursuant to the County Sewer Act, every day that a municipality introduces excessive inflow and infiltration—more than 150 gallons per capita per day—into the country trunk sewer system, at each connection to the county trunk sewer system, is a violation of the Sewer Act.¹⁷² Further, Westchester County acknowledges that there is still a significant inflow and infiltration problem within the collection system,¹⁷³ and that, in addition to the publicly owned collection systems, additional sources of inflow and infiltration are private sewer laterals which connect to the system and basement sump pumps,¹⁷⁴ but the County fails to enforce the requirement that the municipalities make repairs to tributary sewer systems within their borders and adopt private sewer lateral programs to insure compliance with the CWA, New York's ECL Article 17, and the SPDES Permits for such Districts.

¹⁶⁹ Westchester County Administrative Code, Section 824.72 (5).

¹⁷⁰ Westchester County Administrative Code, Section 824.72 (6).

¹⁷¹ Westchester County Administrative Code, Section 824.72(7).

¹⁷² Westchester County Administrative Code, Section 824.72(2).

¹⁷³ For instance, the New Rochelle Flow Reduction Study identified Total Inflow of 369,000 gallons (Private Inflow 24,000 g, Public Inflow 200,000 g, Manholes 145,000 g) and Total Infiltration of 1,405,082 gpd (Pipeline Infiltration 1,297,237 gpd, and Manholes 107,845), as described in Tables 15 and 16,

¹⁷⁴ New Rochelle Flow Reduction Study p. ES-3, ES-4.

The County also fails to enforce the requirement that the municipalities in the Westchester Sanitary Sewer Districts insure that illegal connections that result in excessive flows are discovered and disconnected and to insure that private sewer laterals in the tributary systems do not contribute or exacerbate the inflow and infiltration problem in these Districts.

Finally, Westchester County fails to enforce the requirement that the municipalities in the Westchester Sewer Districts annually file copies of all plans for such maintenance and repair program with the Commissioner of Environmental Facilities by September first of each year. Although the County has acknowledged that “Pelham Manor has not filed for report year 2010 (due September 2011), report year 2011 (due September 2012) and report year 2012 (due September 2013)”¹⁷⁵ and “Larchmont has not filed for report year 2010 (due September 2013),”¹⁷⁶ as well as the Village of Mamaroneck in 2004,¹⁷⁷ upon information and believe, no enforcement actions have been initiated under the County Sewer Act.

C. Violations of the SPDES Permit Conditions and of the Order on Consent Case No. CO 3-20080730-65 for Failure to Implement Flow Reduction Requirements (Flow Reduction Strategy Plan) in the New Rochelle, Mamaroneck, Blind Brook, and Port Chester Sanitary Sewer Districts

The SPDES Permits for the New Rochelle, Mamaroneck, and Blind Brook Sanitary Sewer Districts, in their Schedule of Compliance, explicitly include the “Inflow/Infiltration Program”, and require to monitor inflow and infiltration levels and submit annual summary reports to the NYSDEC.¹⁷⁸ As stated above, the Inflow and Infiltration Program is a condition of the SPDES Permits that must be vigorously pursued in sanitary sewer systems with active overflows, such as the Westchester Sanitary Sewer Districts with overloaded and complex systems of pump stations—with emergency bypasses—that may, in such circumstances, discharge raw sewage into Long Island Sound—and even two sanitary sewage overflow control facilities or ORFs that may, in heavy rainstorms, discharge partially-treated sewage into Long Island Sound.

To develop the Inflow/Infiltration Program, the 2008 Order on Consent, Case No. CO 3-20080730-65, required Westchester County to implement a Flow Reduction Strategy Plan,¹⁷⁹

¹⁷⁵ WCDEF Letter, January 7, 2014, p. 2.

¹⁷⁶ WCDEF Letter, January 7, 2014, p. 2.

¹⁷⁷ See letter from Carolyn Lowe (ARCADIS) to Richard Slingerland (Manager Village of Mamaroneck), dated March 9, 2015, page 2.

¹⁷⁸ See NYSDEC, SPDES Permit No. NY-0026697, Schedule of Compliance, page 20 of 22; NYSDEC, SPDES Permit No. NY-0026701, Schedule of Compliance, page 16 of 18; NYSDEC, SPDES Permit No. NY-0026719, Schedule of Compliance, page 16 of 18.

¹⁷⁹ See 2008 Consent Order, Appendix A, Item 18: “Develop a flow reduction strategy”, Submission date October 1, 2012.

which was approved by the NYSDEC in a letter dated June 25, 2013.¹⁸⁰ The 2008 Consent Order states: “[i]f DEC approves the submission in whole, the submission shall be incorporated into this Order and Respondent shall implement it, in accordance with its schedules and term, as approved.”¹⁸¹ Thus, as WCDEF admits, “[o]nce it was accepted by NYSDEC it became part of the 2008 Order on Consent”.¹⁸²

The schedule for implementation of the Flow Reduction Strategy Plan requires that the County undertake several actions, including the following: (1) complete negotiations with the municipalities by July 1, 2014; (2) submission and review of the municipalities’ Evaluation Program Development between April 1, 2015 and August 31, 201; and, (3) Implementation of the programs September 1, 2015 thru 2017.¹⁸³ Under its own admission, the County has failed to meet milestones (1) and (2), as required by the 2008 Consent Order, and therefore will be unable to begin implementation of the program on September 1, 2015. On April 30, 2015, the County acknowledged that negotiations with the municipalities were ongoing and had only reached a “tentative agreement with the four municipalities within the New Rochelle Sewer District to take action to identify and reduce excess inflow and infiltration.”¹⁸⁴

By failing to comply with the schedule of the Flow Reduction Strategy Plan to reduce inflow and infiltration, Westchester County violates the requirements of the SPDES Permits and of the 2008 Consent Order, thus violates Section 402, 33 U.S.C. § 1342 and the ECL Article 17.

VIII. Notice

Westchester County’s actions and omissions are subject to relief under the CWA, Section 505 of the Act, 33 U.S.C. § 1365. As required under the Act and Federal regulations at 40 CFR Part 135, Save the Sound is serving this notice. If you believe that any of the facts described above are in error or have any information indicating that the County is not in violation of the CWA and the ECL please contact the undersigned counsel immediately. Save the Sound is interested in early and prompt resolution of these violations.

¹⁸⁰ See Westchester County, Quarterly Report No. 25, p. 7.

¹⁸¹ See 2008 Consent Order, Section V.(C), p. 14.

¹⁸² WCDEF Letter, April 1, 2014, p. 2.

¹⁸³ See Westchester County, Flow Monitoring Program Report, ES-9, ES-10, Figure ES-2, 10-2, 10-3, Figure 10-1.

¹⁸⁴ See Westchester County, Quarterly Report No. 25, p. 7.

Sincerely,

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