

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Articles 17 and 71 of the
Environmental Conservation Law, Part 750 of
Title 6 of the New York Codes, Rules and Regulations
and SPDES Permit No. NY0027162

ORDER ON CONSENT

By:

File No. 25-19
R9-20250509-36

City of Olean
Olean Municipal Building
101 East State Street
Olean, New York 14760,
Respondent

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (the "Department") is an Executive Agency of the State of New York (the "State") with jurisdiction over the environmental policy and programs of the State pursuant to the provisions of the New York State Department of Environmental Conservation Law ("ECL") and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR" or the "Regulations").

2. The Department's jurisdiction includes the abatement and prevention of pollution of State waters pursuant to Article 17 of the ECL and 6 NYCRR Part 750, *et seq.* This jurisdiction authorizes the Department, as a State agency with an approved program pursuant to Sections 318, 402 and 405 of the federal Clean Water Act ("CWA"), 33 U.S.C. Section 1251, *et seq.*, to regulate the discharge of pollutants from point sources into the waters of the State in conformity with the CWA.

3. Pursuant to its authority to protect the waters of the State, the Department administers the State Pollutant Discharge Elimination System Permit ("SPDES") program. In general, the SPDES program prohibits any discharge of pollutants to the waters of the State without a SPDES permit establishing pollutant limitations and treatment requirements, or in a manner other than as prescribed by such a permit.

4. This Order on Consent (the "Order") is issued in accordance with the Department's enforcement authority pursuant to ECL Articles 3 and 71.

Parties

5. The City of Olean ("Respondent") is a municipal agency which owns, operates and/or maintains control of a publicly owned treatment works ("POTW") including various sanitary sewers and sanitary outfalls as well as a wastewater treatment plant located on South 19th Street, Olean, New York.

6. Respondent is subject to Article 17 of the ECL, and the regulations promulgated thereto, which govern the control and prevention of water pollution.

Facts

7. Respondent operates the POTW pursuant to SPDES Permit No. NY0027162 ("SPDES Permit"). Respondent is authorized to discharge from the POTW in accordance with effluent limitations; monitoring and reporting requirements; other provisions and conditions set forth in the SPDES Permit; and 6 NYCRR 750-1 and 750-2.

8. The POTW is authorized under the SPDES Permit to discharge treated wastewater via Outfall 001 into the Allegheny River. The Allegheny River is deemed a Class "C" waterway.

9. Respondent operates and maintains nine lift stations with three capable of bypassing during heavy storm events that exceed the pumping capacity – South 4th Street; Adams Street; and Martha Avenue resulting in Sanitary Sewer Overflows ("SSOs"). During dry weather and typical precipitation conditions, each station pumps sanitary waste through a force-main directly to the POTW for treatment.

10. The South 4th Street pump station overflows to the Allegany River.

11. The Adams Street pump station overflows to Olean Creek.

12. The Martha Avenue pump station overflow to McCann Brook.

13. SSOs are prohibited discharges of raw sewage from sanitary sewers and can expose people to bacteria that may cause illness through contaminated water sources or recreation in waterbodies.

14. SSOs may also cause impairment of the best usages of the receiving water as specified by the water classification at the location of the discharge and other locations that may be affected by the discharge.

15. Potential adverse impacts associated with SSOs are one of the reasons for the promulgation of the Sewage Pollution Right to Know ("SPRTK") law which requires the reporting of SSOs to the Department, and the local health department or

New York State Department of Health immediately, but no later than two hours from discovery of the discharge.

16. Respondent entered into Order on Consent, R9-20130426-37, with an effective date of November 7, 2014 ("2014 Order"), due to Respondent's failure to abide by previous Orders on Consent and its failure to comply with its SPDES effluent limits. The Schedule A to the 2014 Order was subsequently amended, with an effective date of November 20, 2017 ("2017 Amendment"). The 2014 Order and 2017 Amendment required, among other obligations, the submission of approvable annual reports.

17. In July 2025, the Department initiated a study of Inflow and Infiltration ("I & I") with a consultant ("DEC Contractor") to identify all major sources of I & I that contribute to Respondent's sanitary sewer system and develop recommendations to eliminate all SSOs ("I/I Report").

Violations

18. Pursuant to the SPRTK Law, Respondent self-reported, via the NY Alert System, eleven SSO events on six dates which discharged a total of approximately 847,500 gallons of untreated wastewater from 2022 through 2024 into the Allegheny River, Olean Creek and McCann Brook, in violation of ECL §§ 17-0501, 17-0505, and 17-0509 and 6 NYCRR 750-2.8(b)(2). The table below summarizes the SSO discharge events.

| Date | Pump Station | Volume (gallons) | Duration (minutes) | Receiving Water Body |
|----------|---------------------------------|------------------|--------------------|----------------------|
| 2/17/22 | Martha Avenue/#5 | 85,000 | 8 hours | McCann Brook |
| 2/17/22 | South 4 th Street/#2 | 200,000 | 4 hours | Allegheny River |
| 3/7/22 | South 4 th Street/#2 | 48,000 | 40 | Allegheny River |
| 11/11/22 | South 4 th Street/#2 | 7,500 | 45 | Allegheny River |
| 11/11/22 | Adams Street/#3 | 1,000 | 30 | Olean Creek |
| 8/25/23 | South 4 th Street/#2 | 40,000 | 48 | Allegheny River |
| 4/3/24 | South 4 th Street/#2 | 71,000 | 68 | Allegheny River |
| 4/3/24 | South 4 th Street/#2 | 115,000 | 110 | Allegheny River |
| 6/19/24 | Martha Avenue/#5 | 30,000 | 187 | McCann Brook |
| 6/19/24 | South 4 th Street/#2 | 200,000 | 242 | Allegheny River |
| 6/19/24 | Adams Street/#3 | 50,000 | 148 | Olean Creek |

19. Based on Discharge Monitoring Reports, Respondent exceeded the 7-day geometric mean fecal coliform effluent limitation for Outfall 001 in August 2019 and July 2021, in violation of its SPDES Permit.

20. Based on Discharge Monitoring Reports, Respondent exceeded the 30-day geometric mean fecal coliform effluent limitation for Outfall 001 in August 2019 and July 2021, in violation of its SPDES Permit.

21. Based on Discharge Monitoring Reports, Respondent did not meet percent removal requirements for BOD5 at Outfall 001 for the period of January 2017 through April 2017, in violation of its SPDES Permit.

22. Based on Discharge Monitoring Reports, Respondent did not meet percent removal requirements for TSS at Outfall 001 for the period of January 2017 through April 2017 and April 2024, in violation of its SPDES Permit.

23. Respondent failed to submit or submitted deficient annual reports for the following reporting years: 2017, 2018, 2019, 2020, 2021, 2022 and 2023 which did not include adequate documentation of SSO abatement efforts, discharge events, summaries of violations and overflow events, and future priorities, in violation of the 2014 Order, 2017 Amendment and ECL § 71-1929.

24. A Notice of Violation, dated May 12, 2025, was issued to the Respondent outlining the violations referenced above.

Provisions of Law

25. ECL 17-0501 provides that it shall be unlawful for any person to discharge, directly or indirectly, organic or inorganic matter into waters that will cause or contribute to a condition in contravention of water quality standards adopted by the Department.

26. ECL 17-0505 provides that the making or use of an outlet or point source discharging into the waters of the State, and the operation or construction of disposal systems, without a valid SPDES permit are prohibited.

27. ECL 17-0509(2) states that the minimum degree of treatment required for the discharge of sanitary sewage into the surface waters of the State shall be effective secondary treatment provided, however, that additional treatment may be required consistent with the standards established for specific waters by the Department pursuant to ECL 17-0301 or with standards, criteria, limitations, rules or regulations promulgated or applied pursuant to Title 8 of Article 17 of the ECL.

28. ECL 17-0803 provides that it shall be unlawful to discharge pollutants to the waters of the state from any outlet or point source without a SPDES permit issued pursuant hereto or in a manner other than prescribed by such permit.

29. Pursuant to 6 NYCRR 750-2.8(b)(2), bypasses are prohibited and the department may take enforcement for the bypass unless the criteria outlined in that subpart are met.

30. ECL 71-1929 imposes a penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) per day for each violation of the provisions of Article 17, the

rules promulgated thereunder and any permits or Orders issued thereto, as well as injunctive relief.

31. Respondent violated the provisions listed herein, affirmatively waives its right to a hearing as provided by law, consents to the issuing and entry of this Order pursuant to the provisions of Articles 17 and 71 of the ECL, and agrees to be bound by the provisions, terms and conditions contained in this Order and attachments thereto.

32. This Order on Consent supercedes and replaces the 2014 Order and the 2017 Amendment.

NOW, having considered this matter, **IT IS ORDERED THAT:**

I. **Compliance.** Respondent is bound by, and agrees to follow and comply with, the terms, provisions and requirements set forth in this Order, including Appendix A which is incorporated and made enforceable herein. Upon approval of the Engineering Report submitted under Appendix A, all projects and milestone dates set forth therein, shall be incorporated into and made an enforceable part of, this Order.

II. **Civil Penalty.** With respect to the violations identified in this Order, the Department hereby assesses against the Respondent a civil penalty in the amount of twenty thousand dollars (\$20,000), to be paid as follows:

A. **Payable Penalty:** Seven thousand dollars (\$7,000) shall be paid when the Respondent signs this Order and returns it to the Department, by electronic payment at <https://www.dec.ny.gov/about/doing-business> or by check made payable to the order of the "New York State Department of Environmental Conservation," with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check, which shall be sent to the Department of Environmental Conservation, Division of Management and Budget Services, 625 Broadway, 10th Floor, Albany, NY 12233-4900.

This Order on Consent, along with any applicable submissions, shall be sent to the Department of Environmental Conservation, Office of General Counsel, Region 9, 700 Delaware Avenue, Buffalo, NY 14217, Attention: Terri Mucha, Esq.

B. **Suspended Penalty:** The remaining amount of thirteen thousand dollars (\$13,000) shall be suspended, and shall not be payable, provided that the Respondent fully complies with the requirements of this Order, including all incorporated Appendices and Attachments. If, in the Department's sole discretion, the Respondent violates any term of this Order, including the Schedule of Compliance, the whole amount of the suspended penalty, or any portion thereof, shall be due from the Respondent within 30 days of receiving written notice from the Department that penalties are due.

- C. This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, its trustees, officers, employees, successors and assigns for the above-referenced violations, as well as any violations caused by Olean's sewer system for which DEC had knowledge and notice of as of the date of this Order.
- III. **Default of Payment.** The penalty assessed in this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the State of New York when and if such penalty becomes due.
- IV. **Scope of Settlement.** This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, its trustees, officers, employees, successors and assigns for the above-referenced violations. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge, or which occur after the effective date of this Order.
- V. **Reservation of Rights.** This Order on Consent does not bar, diminish, adjudicate or in any way affect the Department's rights or authorities, except as set forth in the Order on Consent, including but not limited to, exercising summary abatement powers, recovery of any Natural Resource Damages, the collection of regulatory fees, and requiring the Respondent to undertake any additional measures required for the protection of human health or the environment.
- VI. **Access.** The Department, including its employees, agents and representatives shall have the right at all reasonable times during normal business hours on normal business days, and after proper notification to the Respondent and proper identification as Department employees, agents and/or representatives, to enter, investigate, test, and inspect any property or premises related to this Order for the purpose of ascertaining compliance with the Order. The Respondent shall provide a person to accompany the Department's representative during an inspection when notification is provided, be it written or verbal, at least 24 hours prior to such inspection.

- VII. **Force Majeure.** If Respondent cannot comply with a deadline or requirement of this Order on Consent, because of natural disaster, Federal or State declared national or state emergency based on an epidemic or pandemic, war, terrorist attack, strike, riot, judicial injunction, or other, similar unforeseeable event which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement. Respondent shall include in such application the measures taken by Respondent to prevent and/or minimize any delays. Failure to give such notice constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to a claim of non-compliance with this Order on Consent pursuant to this subparagraph.
- VIII. **Default.** Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.
- IX. **Communication.** Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to Andy Fera, Project Director, Division of Water, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233.
- X. **Modification.** No change or modification to this Order will become effective except as specifically set forth in writing and approved by the Commissioner or a duly authorized representative. All modification requests shall be submitted in writing to the Commissioner, or his/her designee. All modification requests shall include the case number, the named Respondent, and an explanation for the request. Any requests to modify a milestone date must be submitted to the Department prior to the milestone date and include a justification for the requested extended timeframe.
- XI. **Indemnification.** Respondent will indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the acts and/or omissions of Respondent, its trustees, officers, employees, servants, agents, successors, or assigns, resulting from the compliance or attempted compliance with the provisions of this Order.
- XII. **Binding Effect.** The provisions, terms, and conditions of this Order shall be deemed to bind Respondent, its heirs, its employees, servants, agents, successors and assigns, and all persons, firms, and corporations acting subordinate thereto.

- XIII. **Entirety of Order.** The provisions of this Order constitute the complete and entire Order issued to the Respondent, concerning resolution of the violations identified in this Order. Terms, conditions, understandings or agreements purporting to modify or vary any term hereof shall not be binding unless made in writing and subscribed by the party to be bound, pursuant to the Modification paragraph of this Order. No oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by the Respondent shall be construed as relieving the Respondent of its obligations to obtain such formal approvals as may be required by this Order.
- XIV. **Obligations.** This Order is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondent's compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein.
- XV. **Effective Date and Period of Order.** The effective date of this Order ("EDO") shall be the date upon which it is signed on behalf of the Department. This Order shall terminate when all requirements imposed by this Order on Consent are completed to the Department's satisfaction.

Dated: 9 / 25 / 2025
Buffalo, New York

Amanda Lefton, Commissioner
New York State Department of
Environmental Conservation

By: 
Julie M. Barrett O'Neill
Regional Director

**COMPLIANCE SCHEDULE
CITY OF OLEAN
CASE NO. R9-20250509-36**

Appendix A

| MILESTONE | COMPLETION DATE |
|---|--|
| <p>1. Respondent shall provide information to and respond promptly to Department staff and/or its contractors, and submit to Department staff an approvable Engineering Report that shall include, at a minimum, the following items and, upon approval by the Department in writing, will be incorporated by reference into this Order:</p> <ul style="list-style-type: none"> a. Identify all major sources of I/I that contribute to Respondent's sanitary sewer overflows (SSOs). b. Identify, scope, and estimate for all projects required to eliminate SSOs from Respondent's system. c. Proposed prioritization, budget and methods for addressing I/I and SSO events. d. An evaluation of the I/I report performed by the DEC Contractor for Respondent's use. In the event Respondent chooses not to include any recommendations set forth in the I/I Report, the Engineering Report submitted by Respondent shall contain a detailed explanation as to why those recommendations were not included. e. Incorporate appropriate projects from previously approved engineering reports and/or work plans. f. A proposed schedule for project implementation including project details and start and completion dates. The start date shall be no later than July 1, 2026 and the completion date shall be no later than November 30, 2028. g. An updated electronic sewer system map developed using an ESRI ArcGIS or equivalent mapping software that is configured to support, at a minimum, the attribute information identified in the Example Geodatabase Specifications document available online through DEC's Asset Management Resources page. The report shall also include map templates to visualize attribute information such as condition, material, and installation or modification (slip lining) date. Respondent shall annually update the | <p style="text-align: center;">March 1, 2026</p> |

| MILESTONE | COMPLETION DATE |
|---|--|
| attribute information or as new information becomes available or as projects are completed | |
| 2. a. Implement the projects outlined in the approved Engineering Report referenced in Item 1.f above. | Pursuant to the approved schedule in the Engineering Report. |
| 3. Disconnect all municipal stormwater systems from the sanitary sewer system. | November 30, 2026 |
| <p>4. Meetings and Quarterly Reports</p> <p>a. Respondent shall participate in, at a minimum, monthly meetings with Department staff to discuss progress and completion of projects outlined in the Engineering Report.</p> <p>b. Respondent shall submit quarterly reports that provide a detailed description of the work completed pursuant to the Engineering Report, a projection of the work to be performed during the next quarterly period, and notification of any anticipated delays for the upcoming quarterly period. The quarterly report shall also summarize SSO statistics for the preceding quarter, including SSO volumes and frequencies, and shall compare these statistics to previous reporting periods to assess the progress of SSO abatement.</p> | Start upon EDO. |
| <p>5. Capacity, Management, Operation and Maintenance ("CMOM") Program</p> <p>a. Submit a CMOM Plan for Department staff review and approval. Upon approval, this document will become an enforceable part of the Order.</p> <p>b. Begin implementation of the approved CMOM Plan.</p> <p>c. Submit an annual report to Department staff detailing the actions taken the preceding year with respect to the CMOM Plan.</p> | <p>March 1, 2027</p> <p>Upon DEC approval</p> |
| 6. Respondent shall develop an Asset Management Program using the Asset Management Guidance for | March 1, 2028 |

| MILESTONE | COMPLETION DATE |
|--|------------------------|
| POTWs (August 2021) and, upon Department staff acceptance, implement the plan. | |