

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

AMANDA LEFTON, as Commissioner of the New
York State Department of Environmental
Conservation, and the NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Plaintiffs,

- against -

THE BUFFALO SEWER AUTHORITY,

Defendant.

Index No. 816176/2025

~~[PROPOSED]~~
CONSENT JUDGMENT

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WHEREAS, plaintiffs Amanda Lefton, as Commissioner of the New York State Department of Environmental Conservation (DEC) and the DEC (together “DEC”), have filed a verified complaint ((the “Complaint”) in this action concurrently with this Consent Judgment seeking civil penalties and injunctive relief relating to the municipal wastewater treatment facilities and combined sewer system operated by defendant the Buffalo Sewer Authority (“BSA”). The Complaint alleges that BSA violated Article 17 of the New York State Environmental Conservation Law (ECL), ECL § 17-0801, *et seq.*, by failing to comply with its approved combined sewer overflow (“CSO”) long-term control plan (“LTCP”) implementation schedule, as required by the administrative compliance order issued by the Environmental Protection Agency (EPA), and its DEC-issued State Pollutant Discharge Elimination System (“SPDES”) permit no. NY0028410 (the “Permit”). The Complaint additionally alleges that in 2024 BSA violated effluent discharge limits and bypass operation and reporting requirements of the Permit.

WHEREAS, the primary purpose of this Consent Judgment is to specify the requirements for BSA to submit and, upon DEC approval, implement an amended LTCP (“Amended LTCP”) to reduce the number of CSO discharges to waters of New York and the United States and achieve the Typical Year CSO activation limits, as defined below, by receiving waterbody, as specified in its previous 2014 LTCP. The Amended LTCP will update and supersede the previously approved 2014 LTCP. The terms of this Consent Judgment require that all capital control projects

outlined in the approved Amended LTCP be completed no later than December 31, 2040.

WHEREAS, BSA owns and operates a publicly owned treatment works ("POTW"), as defined at 40 C.F.R. § 403.3, consisting of its Bird Island Wastewater Treatment Facility ("Bird Island WWTF") located at 90 West Ferry Street, Buffalo, New York 14213, and its Combined Sewer System, located in the City of Buffalo (collectively the "Facility"), pursuant to the Permit.

WHEREAS, the Permit authorizes BSA to discharge sanitary wastewater and stormwater runoff from three Bird Island WWTF outfalls and 52 CSO outfalls into the Receiving Waters, as defined below, in accordance with requirements and conditions contained in the Permit.

WHEREAS, EPA's "Combined Sewer Overflow Control Policy," 59 Fed. Reg. 18,688 (April 19, 1994), 33 U.S.C. § 1342(q), ("EPA's CSO Policy") directs CSO permittees to develop and submit an LTCP that addresses the following nine minimum core elements: (i) characterization, monitoring, and modeling; (ii) public participation; (iii) consideration of sensitive areas; (iv) evaluation of alternatives; (v) cost/performance considerations; (vi) operational plan; (vii) maximization of treatment at the existing POTW treatment plant; (viii) implementation schedule; and (ix) post construction monitoring program.

WHEREAS, EPA's CSO Policy indicates that states and EPA should coordinate review and appropriate revision of water quality standards and

implementation procedures with development of the LTCP to ensure that long-term controls will be sufficient to meet water quality standards.

WHEREAS, BSA developed and submitted a draft LTCP on January 13, 2014 to DEC and EPA, that complied with EPA's CSO Policy.

WHEREAS, BSA's draft LTCP included a schedule for various construction and collection system projects to be implemented over a 20-year period to substantially reduce CSO discharges from BSA's Combined Sewer System. The 20-year implementation schedule was associated with a significant decrease in Typical Year CSO activations. The 20-year implementation schedule was predicted to reduce the number of CSO activations from approximately 65 CSO discharge events per year to 0-9 CSO discharge events in a Typical Year at BSA's CSO outfalls.

WHEREAS, EPA and DEC approved BSA's draft LTCP on March 18, 2014 (the "2014 LTCP").

WHEREAS, EPA, thereafter, issued an Administrative Compliance Order, CWA-02-2014-3033, on April 11, 2014 (the "2014 EPA Order"), which required BSA to implement the 2014 LTCP in accordance with the 20-year implementation schedule. The 2014 EPA Order required BSA to complete implementation of all 2014 LTCP projects by no later than March 18, 2034.

WHEREAS, DEC thereafter amended the Permit to require BSA to implement the 2014 LTCP in accordance with the 2014 Order.

WHEREAS, the below facts outline BSA's compliance and alleged noncompliance with its Permit and the 2014 EPA Order and support the approval of

this Consent Judgment;

- To date BSA has completed construction of more than 33 of the projects included in the 2014 LTCP and the 2014 EPA Order and has managed over 670 acres of impervious surface through Green Infrastructure projects. Five more LTCP projects are currently in construction and 12 are in various stages of design.
- Since 2014, BSA alleges that it has invested over \$158 million dollars in plant and collection system improvements, resulting in significant reductions in CSO discharges, system-wide activations, and total activations.
- One of the major construction projects set forth in the 2014 LTCP is the No Feasible Alternative Project ("NFA Project"), and it is designed to improve treatment at the WWTF. The NFA Project will increase the secondary treatment capacity of the WWTF, minimizing the amount of wastewater that bypasses secondary treatment.
- The NFA Project is being conducted in three phases, with Phase I (WWTF Secondary System Rehabilitation and Upgrade Project) currently under construction. The engineering report for Phase II (WWTF Primary Treatment Renovation) was approved by DEC on June 8, 2023, and BSA's bidding process for the award of contracts for construction services is in progress. BSA approved the engineering design contract for Phase III on January 26, 2024.
- The Permit and 2014 EPA Order required BSA to (i) start engineering on the NFA Project by March 18, 2015, (ii) issue a notice to proceed by March 18, 2017, (iii) complete engineering on the NFA Project by March 18, 2019, and (iv) substantially complete the NFA Project by March 18, 2022, in accordance with the 2014 LTCP.
- On September 1, 2015, BSA notified DEC and EPA that the design engineering of the NFA Project was delayed due to the unexpected need to, as part of the NFA Project, remove extensive quantities of grit that had accumulated in the WWTF system, and that these issues had to be rectified to allow for accurate measurements necessary to complete design engineering of the NFA Project.
- EPA issued BSA a Notice of Violation, dated November 8, 2018, alleging that BSA failed to start engineering on the NFA Project by the March 18, 2015 date, precluding BSA from completing the engineering

on the NFA Project by the March 18, 2019 deadline, in violation of the Permit and 2014 EPA Order. To account for delays caused by the cleaning/grit removal work, BSA requested extensions through September 2021 for the start of NFA Project engineering and through November 2024 for the completion of the NFA Project engineering.

- In a letter dated November 28, 2018 to DEC and EPA, BSA provided an update on the cleaning/grit removal work remaining, with a schedule for completion of the remaining work, and, based on the work remaining, requested an extension to submit the engineering for the NFA Project design to September 2021.
- Based on communications with EPA related to the delays caused by the cleaning/grit removal work, on April 11, 2019 BSA submitted a request to extend the NFA Project schedule.
- Due to the estimated costs associated with removing grit from the aeration tanks in the secondary system, BSA determined that it would replace the entire aeration system as part of the NFA Project.
- In response to BSA's request for an extension of the NFA Project schedule, DEC requested additional information, including a financial capability analysis. BSA retained an expert consultant, and submitted the financial capability analysis on December 31, 2020.
- Although BSA started preliminary engineering activities for Phase I of the NFA Project by March 18, 2015, given unexpected interruptions in the implementation of the NFA Project, BSA issued a request for proposal on July 23, 2019 and started design engineering on Phase I on November 25, 2019; and, issued the request for proposal for Phase II on May 20, 2020 and started design engineering on October 28, 2020.
- On January 28, 2020, BSA submitted the NFA Project Phase I engineering report to DEC and EPA for approval, which was approved on September 29, 2021. The Phase I design engineering was completed on June 13, 2021, and the notice to proceed was issued on October 19, 2022.
- On October 29, 2021, BSA submitted an NFA Project Phase II engineering report to DEC and EPA, and a revised engineering report was submitted by BSA on May 31, 2022 responding to DEC's February 8, 2022 comments, which was approved on June 8, 2023.

- Throughout the cleaning/grit removal process, BSA provided semi-annual updates to DEC and EPA on the status of the cleaning/grit removal and the anticipated schedule for the NFA Project.
- BSA has not issued a notice to proceed for Phases II or III, or achieved substantial completion for Phase I, Phase II or Phase III of the NFA Project to date.
- BSA conducted a collection system model recalibration in 2019.
- On October 6, 2021, DEC and EPA approved BSA's Collection System Model – Model Update Report ("2021 Approved Recalibrated Model"), which BSA used to analyze the physical and financial feasibility and efficacy of projects included in the 2014 LTCP.
- Based on the 2021 Approved Recalibrated Model, it was determined that certain collection system projects included in the 2014 LTCP were not feasible or would not be able to achieve the Typical Year CSO activation limits, by receiving waterbody, associated with the 2014 LTCP.
- BSA conducted an optimization process and identified new opportunities to improve utilization of existing system capacity and add conveyance and storage capacity where needed most to address activations.
- BSA alleges that starting in March 2020, the COVID-19 pandemic and the associated shutdowns across the economy, hyper-inflation, and supply chain problems caused delays and hindered BSA's ability to complete the NFA Project and related activities.
- Technical staff from DEC, EPA, and BSA have met on several occasions between 2018 and 2023 to resolve the alleged CWA and State violations relating to the Permit and 2014 EPA Order.
- In mid-2023, DEC, EPA, and BSA agreed that BSA would submit a proposed amended LTCP to comply with the terms of its Permit and achieve the Typical Year CSO activation limits, by receiving waterbody, associated with the 2014 LTCP.

WHEREAS, the Amended LTCP should assess all core elements in

accordance with EPA's CSO Policy and provide that BSA may satisfy these elements with multiple documents and submissions.

WHEREAS, the below facts support the content of the Proposed Amended LTCP and approval of this Consent Judgment;

- BSA prepared and submitted an LTCP Optimization Selected Alternative memo on December 22, 2023 and a revised LTCP Optimization Selected Alternative memo on July 12, 2024 (the "2024 LTCP Selected Alternative memo") (Appendix A) that provides a set of alternative capital control projects that would replace or otherwise modify some of the projects set forth in the 2014 LTCP and a technical explanation of how those alternative projects would achieve the Typical Year CSO activation limits, by receiving waterbody, associated with the 2014 LTCP.
- BSA prepared an initial LTCP Optimization Bridging Document on July 6, 2023, to memorialize EPA, DEC, and BSA's technical discussions, consensus, and their mutual decision to develop a proposed amended LTCP to modify, remove, and add projects and establish updated schedules. On December 22, 2023, BSA submitted a revised LTCP Optimization Bridging Document, and on July 12, 2024, BSA submitted a further revised LTCP Optimization Bridging Document (the "2024 Bridging Document") (Appendix B).
- The 2024 Bridging Document provides a detailed overview of the disposition of the projects in the 2014 LTCP and the alternative projects proposed in the 2024 LTCP Selected Alternative memo. The 2024 Bridging Document provides a detailed proposal of projects from the 2014 LTCP that have not been completed and should be carried over to a proposed amended LTCP and alternative projects proposed in the 2024 LTCP Selected Alternative memo (collectively the "Control Projects"). The Control Projects are intended to achieve the Typical Year CSO activation limits, by receiving waterbody, associated with the 2014 LTCP. The Control Projects include the NFA Project and 52 updated collection system projects ("Collection System Projects").
- The 2024 Bridging Document includes each Control Project's schedule, estimated cost, water quality goals and limits, and other site-specific considerations.

- On December 22, 2023, BSA submitted an updated schedule for all the Control Projects, and on July 12, 2024 and again on December 31, 2024, BSA submitted a revised schedule for the Control Projects (the “2024 Control Project Schedule”) (Appendix C). The 2024 Control Project Schedule establishes each Control Project’s (i) Design Start Date; (ii) Design Completion Date; (iii) Notice to Proceed Date; and (iv) Complete Construction Date. The 2024 Control Project Schedule requires all projects to be completed no later than December 31, 2040 (the “Date of Achievement of Complete Construction for Control Projects”).
- DEC agrees that the Control Projects set forth in the 2024 Bridging Document and the schedules set forth in the 2024 Control Project Schedule represent a fair and reasonable proposed amended LTCP schedule that affords BSA appropriate time to perform necessary repairs to its Combined Sewer Systems while ensuring that BSA effectively controls CSO discharges to waters of the state, and United States and, otherwise, comports with its Permit obligations.
- On September 25, 2024, BSA submitted a Public Participation Plan which lays out procedures and a schedule to inform the public about actions and projects outlined in the 2024 Bridging Document (Appendix B) and the schedules set forth in the 2024 Control Project Schedule (Appendix C), which the Parties agree make up the Proposed Amended LTCP. The Public Participation Plan also provides opportunities for the public to have their views heard and considered concerning the actions required by this Consent Judgment throughout its implementation.
- DEC approved the Public Participation Plan on October 1, 2024 (Appendix D).
- BSA agrees to complete the public participation process on the Proposed Amended LTCP within 12 Months of receiving DEC’s approval of the Public Participation Plan.
- BSA agrees to comply with the deadlines set forth in the 2024 Control Project Schedule (Appendix C) to the best of its ability until the Consent Judgment is entered whereupon BSA agrees to comply with the obligations set forth in the Consent Judgment.
- DEC agrees that the 2014 LTCP, the 2024 LTCP Selected Alternative memo (Appendix A), the 2024 Bridging Document (Appendix B), 2024 Control Project Schedule (Appendix C), and Public Participation Plan

(Appendix D) together are submitted by BSA to satisfy the first, second, third, fourth, fifth, sixth, seventh, and eighth elements of EPA's CSO Policy for an Amended LTCP.

- DEC and BSA agree that a Post Construction Compliance Monitoring Plan is required to satisfy the ninth element of EPA's CSO Policy for an Amended LTCP and that such a plan will be developed under this Consent Judgment.

WHEREAS, DEC has alleged that, in addition to its Permit violations arising from failure to timely implement a compliant LTCP, BSA violated various effluent limit, bypass and reporting provisions of the Permit in 2024 (the "2024 Permit Violations"). More particularly, BSA's Monthly Discharge Monitoring Reports (DMRs) between June 1, 2024 and August 31, 2024 demonstrated that it exceeded the daily maximum effluent limit for settleable solids at Outfall 002 (0.3 mL/L) by 500% during the reporting period for June 2024, and 1,233% during the reporting period for August 2024.

WHEREAS, BSA experienced 11 dry weather bypasses from BSA's outfall 001 in August 2024 and December 2024 in violation of 6 NYCRR 750-2.8(b). BSA is not authorized to discharge from Outfall 001 under dry-weather conditions. The dates and parameters of those 11 violations are set forth below.

Date of Bypass	Duration (Hr)	Average Influent (MGD)	Peak Flow (MGD)	001 Discharge (MG)
8/22/2024	10.47	93	145	17
8/23/2024	13.41	79	124	23
8/24/2024	8.93	65	110	19
8/25/2024	12.77	71	117	17
8/26/2024	18	67	118	27
8/27/2024	13.6	71	114	12
8/28/2024	24	74	120	25

Date of Bypass	Duration (Hr)	Average Influent (MGD)	Peak Flow (MGD)	001 Discharge (MG)
8/29/2024	13.62	73	127	20
8/30/2024	6.68	86	111	11
12/6/2024	7.22	102	165	28
12/7/2024	23.22	98	152	78

WHEREAS, BSA did not submit to DEC the requisite bypass reports or reports of anticipated non-compliance for the above bypasses in violation of 6 NYCRR 750-2.7 and 750-2.8(b). DEC and BSA wish to resolve BSA's liability for these alleged violations by BSA paying civil statutory penalties and funding an environmental benefit project pursuant to this Consent Judgment.

WHEREAS, by entering into this Consent Judgment BSA neither admits nor denies any liability to the State arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, DEC and BSA (together the "Parties") recognize, and the Court, by entering this Consent Judgment, finds, that this Consent Judgment has been negotiated by the Parties in good faith, will avoid litigation between the Parties, and is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law, except as provided in Section I with the consent of the Parties, IT IS HEREBY ORDERED AND ADJUDGED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Judiciary Law § 140-b and ECL § 71-2727.
2. Venue is proper in Erie County pursuant to CPLR § 503 because BSA resides in Erie County and the alleged violations at issue occurred there.
3. For purposes of this Consent Judgment, or any action to enforce it, BSA consents to the Court's jurisdiction over this Consent Judgment and any such action over BSA and consents to venue in this county.
4. For purposes of this Consent Judgment, BSA agrees that the Complaint states claims upon which relief may be granted pursuant to CPLR § 3211.

II. APPLICABILITY

5. The obligations of this Consent Judgment apply to and are binding upon the DEC, and upon BSA, and any successors, assigns, or other entities or persons otherwise bound by law.
6. No transfer of ownership or operation of BSA's Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve BSA of its obligation to ensure that the terms of the Judgment are implemented. At least 30 Days prior to such transfer, BSA shall provide a copy of this Consent Judgment to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to DEC in accordance with Section XV (Notices). Any attempt to transfer ownership

or operation of the Facility without complying with this Paragraph constitutes a violation of this Judgment.

7. BSA shall provide a copy of this Consent Judgment to all officers, employees, and agents whose duties might reasonably include compliance with any of its provisions, as well as to any contractor retained to perform any required work. BSA may provide a copy of this Consent Judgment in electronic format to meet this requirement. BSA shall condition any such contract upon performance of the work in conformity with the terms of this Consent Judgment.

8. In any action to enforce this Consent Judgment, BSA shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with its provisions.

III. OBJECTIVES

9. It is the express purpose of the Parties in entering into this Consent Judgment to require BSA, through implementation of its LTCP, to take all measures necessary to fulfill the objectives of the Clean Water Act ("CWA"), to achieve and maintain compliance with ECL Article 17, its Permit (including, to the extent incorporated therein, the 2014 EPA Order), and any applicable Federal and State regulations, including, but not limited to, the reduction of discharges from the CSO outfalls listed in the Permit.

IV. DEFINITIONS

10. Terms used in this Consent Judgment that are defined in either ECL Article 17 or the Clean Water Act, or in regulations promulgated thereunder have

the meanings assigned to them in those laws or regulations, unless otherwise provided in this Judgment. Whenever the terms set forth below are used in this Consent Judgment, the following definitions apply:

“2014 EPA Order” shall mean the Amended Administrative Compliance Order, CWA-02-2014-3033, EPA issued BSA on April 11, 2014;

“2014 LTCP” shall mean BSA’s LTCP that was jointly approved by DEC and EPA on March 18, 2014;

“2024 Bridging Document” shall mean the document set forth in Appendix B produced by BSA on July 12, 2024, memorializing the Control Projects and estimated costs;

“2024 LTCP Selected Alternative memo” shall mean the document set forth in Appendix A produced by BSA on July 12, 2024, outlining the projects that would modify or otherwise replace the 2014 LTCP projects that would no longer be sufficient to achieve the Typical Year CSO activation limits, by receiving waterbody, associated with the 2014 LTCP;

“2024 Control Project Schedule” shall mean the document set forth in Appendix C submitted by BSA on December 31, 2024, establishing each Control Project’s (i) Design Start Date; (ii) Design Completion Date; (iii) Notice to Proceed Date; and (iv) Complete Construction Date;

“Amended LTCP” shall mean the Long Term Control Plan that BSA must submit for approval pursuant to Paragraphs 17-18 and thereafter implement pursuant to Paragraphs 19-20;

“Approvable,” to be considered Approvable any plan which is required to be submitted to DEC must be approvable by DEC upon submission or with only “minimal revision” in response to DEC comments. Consistent with 6 NYCRR Section 750-1-2(8), “minimal revision” shall mean the facility plan can be revised and resubmitted to DEC within 60 Days of notification by DEC that the revisions are necessary;

“Bird Island WWTF” shall mean BSA’s Bird Island Wastewater Treatment Facility located at 90 West Ferry Street, Buffalo, NY 14213;

“Bird Island WWTF Outfalls” shall mean Outfall No. 001, Outfall No. 01A, and Outfall No. 002 located at the Bird Island WWTF, and described more particularly in the Permit.

“BSA” shall mean Defendant the Buffalo Sewer Authority;

“Building/Private Property Backup” shall mean a release of municipal sewage into a building or onto private property that is caused in whole or in part by blockages, flow conditions, or other conditions in the Combined Sewer System;

“Collection System Project” shall mean a project designed to reduce discharges within BSA’s combined sewer collection system, from CSO outfalls during wet weather events;

“Combined Sewer Overflow” or “CSO” shall mean any discharge from the BSA’s Combined Sewer System through a permitted CSO outfall prior to treatment at its Bird Island WWTF. The term shall include any discharge from the CSO outfalls described more particularly in the Permit;

“Clean Water Act,” or “Act” shall mean the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*;

“Combined Sewer System” or “CSS” shall mean the wastewater collection and conveyance system, as defined in 40 C.F.R. § 122.2, owned and/or operated by BSA;

“Complaint” shall mean the verified complaint filed by the DEC in this action;

“Consent Judgment” or “Judgment” shall mean this Consent Judgment and Appendices attached hereto (listed in Section XXIV). In the event of a conflict between this Consent Judgment and any Appendix or any approved plan, report, or other item or deliverable, this Consent Judgment shall control;

“Control Projects” shall mean the projects set forth in the 2024 Bridging Document. Control Projects can be divided into two broad categories: (i) 52 Collection System Projects and (ii) the NFA Project;

“Date of Achievement of Complete Construction for Control Projects” shall mean December 31, 2040, the date by which BSA must complete construction for all Control Projects as set forth in the 2024 Control Project Schedule or a Revised Control Project Schedule;

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next business day;

“DEC” shall mean the New York State Department of Environmental Conservation and any of its successor departments or agencies;

“DEC Commissioner’s Policy 29” shall mean DEC’s guidance for incorporating environmental justice concerns into DEC’s permit review process.

The DEC Commissioner’s Policy 29 can be accessed at <https://dec.ny.gov/regulatory/guidance-and-policy-documents/commissioner-policy-29-environmental-justice-and-permitting>.

“Effective Date” shall mean the definition provided in Section XVI (Effective Date);

“EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

“EPA’s CSO LTCP Guidance” shall mean EPA’s “Combined Sewer Overflows Guidance for Long-Term Control Plan,” which was issued on August 31, 1995 (EPA 832-B-95-002);

“EPA’s CSO Policy” shall mean EPA’s “Combined Sewer Overflow Policy,” which was published in the Federal Register on April 19, 1994 (59 Fed. Reg. 18,688);

“Facility” shall mean BSA’s POTW, consisting of its Bird Island WWTF and its Combined Sewer System. Any changes to the BSA’s Bird Island WWTF and its Combined Sewer System after the Effective Date of this Judgment shall also be included in the definition of Facility, and subject to the terms of this Judgment;

“Green Infrastructure” or “GI” shall mean systems and practices that use or mimic natural processes to infiltrate, evapotranspire, and/or harvest stormwater on or near the site where it is generated. Green Infrastructure may include, but is not limited to, green roofs, downspout disconnection, trees and tree boxes, rain gardens, vegetated swales, pocket wetlands, infiltration planters, vegetated median strips, permeable pavements, reforestation, and protection and enhancement of riparian buffers and floodplains;

“In-Line Storage” or “ILS” shall mean methods to utilize the existing storage capacity within Combined Sewer Systems for later conveyance for treatment to a WWTF instead of discharging from CSO outfalls;

“Integrated Plan” shall mean a plan developed in accordance with the Integrated Municipal Stormwater and Wastewater Planning Approach Framework (“EPA IP Framework”), issued by EPA and dated June 5, 2012, pursuant to Section 402(s) of the Act, 33 U.S.C. § 1342(s). The EPA IP Framework can be accessed at https://www3.epa.gov/npdes/pubs/integrated_planning_framework.pdf.

“No Feasible Alternative Project” or “NFA Project” shall mean the multi-phase project designed to improve treatment of wastewater discharges from WWTF Outfalls during wet weather events;

“Non-NFA WWTF Improvements” shall mean projects which, while supportive of the overall NFA project, are both not part of the originally approved NFA project and which can also be categorized as typical WWTF operation and maintenance (“O&M”) activities/upgrades;

“Off-line Storage” or “OLS” shall mean construction and utilization of a means to capture and hold CSS flows outside of a CSS such that the held volume is conveyed to the Bird Island WWTF for treatment after a rain event instead of discharging from CSO outfalls;

“Paragraph” shall mean a portion of this Judgment identified by an Arabic numeral;

“Parties” shall mean the DEC Commissioner DEC, and BSA;

“Permit” shall mean the SPDES Permit No. NY0028410, issued to BSA pursuant to ECL Article 17, Title 8 for the Facility. This term shall include any future extended, modified, or reissued permit therefore;

“Plaintiffs” shall mean the DEC Commissioner and the DEC;

“Post Construction Compliance Monitoring Plan” shall mean a water quality monitoring program adequate to verify compliance with water quality standards (after agency review and appropriate revision, if necessary) and protection of designated uses as well as to ascertain the effectiveness of CSO controls;

“Proposed Amended LTCP” shall mean the set of Control Projects and schedules, outlined in the 2024 Bridging Document (Appendix B) and the 2024 Control Project Schedule (Appendix C), that will be subject to the Public Participation Plan);

“Public Participation Plan” shall mean the outreach and engagement plan set forth in Appendix D for the Proposed Amended LTCP submitted by BSA which includes a description of actions and timeframes to inform the public of actions

required by this Consent Judgment and provides opportunities for the public to have their views heard and considered concerning the actions required by this Consent Judgment;

“Real-Time Control” or “RTC” shall mean a system that performs control actions (e.g., movement of gates, turning pumps on/off) in real time. RTC adjusts the operation of facilities in response to on-line measurements in the field;

“Receiving Waters” shall mean the Niagara River, Black Rock Canal, Erie Basin, Buffalo River, Scajaquada Creek, and Cazenovia Creek;

“Revised Bridging Document” shall mean the updated document BSA must submit pursuant to Paragraph 14, should the results of the Public Participation Plan necessitate changes to the suite of Control Projects set forth in the 2024 Bridging Document;

“Revised Control Project Schedule” shall mean the updated document BSA must submit pursuant to Paragraph 14, should the results of the Public Participation Plan necessitate changes to the 2024 Control Project Schedule;

“Section” shall mean a portion of this Judgment identified by a Roman numeral;

“Sewage Backup” shall mean any overflow, spill, diversion, or release of municipal sewage from BSA’s Combined Sewer System, except for CSOs, that are caused in whole or in part by blockages, flow conditions, or other conditions in the Combined Sewer System;

“State” shall mean the State of New York, acting on behalf of DEC;

“Typical Year” shall mean the selected precipitation hyetograph, a statistical plot of the average rainfall intensity against the time interval, used for LTCP modeling. Here, BSA’s calibrated sewer model utilizes the modified 1993 hyetograph, as detailed in Appendix 2-1 of the 2014 approved LTCP, to estimate the frequency of activation of CSOs within the Buffalo sewer system and to estimate the annual volume of combined sewage discharged from the Combined Sewer Systems during the “Typical Year.”

V. COMPLIANCE REQUIREMENTS

11. BSA shall comply with (i) the terms and conditions of its Permit, including compliance with effluent limits and monitoring requirements therein; (ii) ECL § 17-0801 *et seq.*, and the rules promulgated thereunder; and (iii) the compliance measures and schedules set forth below and in any Appendices.

12. Public Participation Plan. BSA shall comply with the Public Participation Plan (Appendix D) and the schedule set forth therein, which requires, among other things, that BSA complete the public participation process associated with the Proposed Amended LTCP within 12 Months of receiving DEC’s approval of the Public Participation Plan, which BSA received on October 1, 2024.

13. Public Participation on the Proposed Amended LTCP: Not later than 60 Days after completing the public participation process on the Proposed Amended LTCP under the Public Participation Plan, if BSA determines that the results of the public participation process do not warrant any changes to the design, engineering, or operation of any Control Projects or the dates set forth in the 2024 Control

Project Schedule, BSA shall resubmit the 2024 Bridging Document and the 2024 Control Project Schedule, for review and approval by DEC, in consultation with EPA, and in accordance with the review procedures detailed in Paragraphs 25-29.

14. Not later than 60 Days after completing the public participation process on the Proposed Amended LTCP under the Public Participation Plan, if BSA determines that the results of the public participation process warrant any changes to the design, engineering, or operation of any Control Projects, Control Project selection, or the dates set forth in the 2024 Control Project Schedule, BSA shall notify DEC that it intends to submit a Revised Bridging Document and a Revised Control Project Schedule in accordance with the results of the public participation process under the Public Participation Plan. Within six Months of notifying DEC, BSA shall submit a Revised Bridging Document and a Revised Control Project Schedule for review and approval by DEC, in accordance with the review procedures detailed in Paragraphs 25-29.

a. Like the 2024 Bridging Document and the 2024 LTCP Selected Alternative memo, the Revised Bridging Document shall justify the proposed revisions to the Control Project(s) and identify the technical measures BSA will take to ensure any revised and/or alternative Control Project(s) achieve the Typical Year CSO activation limits, by receiving waterbody, associated with the 2014 LTCP. To that end, the Revised Bridging Document shall:

- (1) Provide the justification(s) for keeping, modifying, removing, or replacing the Control Project(s) outlined in the

2024 Bridging Document, presented in terms of cost, schedule, water quality goals, and other site-specific considerations;

- (2) Provide a detailed project description for each of the Control Project(s) outlined in the 2024 Bridging Document and each of the proposed revised and/or alternative Control Project(s), such as sewer infrastructure rehabilitation, number of inflow source disconnections or storage capacity, the volume of storage or scope of sewer separation activities, and the anticipated discharge volume reduction or level of service; and
- (3) Demonstrate that any revised and/or alternative Control Project(s) will achieve equal or better environmental benefits, as demonstrated by meeting the Typical Year CSO activation limits, by receiving waterbody, associated with the 2014 LTCP.

b. The Revised Control Project Schedule may change and/or establish new interim design, engineering, and construction deadlines for any applicable Control Projects. BSA shall provide the justification(s) for any changes to interim design, engineering, and construction deadlines. The Revised Control Project Schedule shall not delay the Date of Achievement of Complete Construction for Control Projects set forth in the 2024 Control Project Schedule.

15. Post Construction Compliance Monitoring Plan. No more than 60 Days after DEC's approval of the resubmitted 2024 Bridging Document and

resubmitted 2024 Control Project Schedule or the Revised Bridging Document and a Revised Control Project Schedule, BSA shall submit a Post Construction Compliance Monitoring Plan for review and approval by DEC, in accordance with the review procedures detailed in Paragraphs 25-29.

16. The Post Construction Compliance Monitoring Plan shall follow EPA's "CSO Post Construction Compliance Monitoring Guidance," EPA- 833-K-11-00, (May 2012) and provide data sufficient for DEC to (1) evaluate the effectiveness of CSO controls in meeting performance goals; and (2) assess compliance with water quality standards.

17. Submission and Approval of an Amended LTCP. No later than 30 Days after receiving DEC's approval of all of the applicable documents referenced in Paragraphs 13-15, BSA shall submit an approvable Amended LTCP for review and approval by DEC, and in accordance with the review procedures detailed in Paragraphs 25-29.

18. The Amended LTCP shall consist of:

- a. The 2014 LTCP;
- b. Either the resubmitted 2024 Bridging Document pursuant to Paragraph 13 or the Revised Bridging Document pursuant to Paragraph 14, whichever is applicable;
- c. Either the resubmitted 2024 Control Project Schedule pursuant to Paragraph 13 or the Revised Control Project Schedule pursuant to Paragraph 14, whichever is applicable;

d. The 2024 LTCP Selected Alternative memo (Appendix A), but only if BSA resubmits the 2024 Bridging Document pursuant to Paragraph 13;

e. The Public Participation Plan (Appendix D); and

f. The Post Construction Compliance Monitoring Plan.

19. Implementation of the Amended LTCP. BSA shall begin implementing the Amended LTCP upon DEC's approval under Paragraph 17 and in accordance with the schedule set forth in the Amended LTCP.

20. BSA shall perform the activities and construct and operate the Control Projects in accordance with the resubmitted 2024 Bridging Document, or, if applicable, the Revised Bridging Document, and by each of the interim and final completion dates set forth in the resubmitted 2024 Control Project Schedule, or, if applicable, the Revised Control Project Schedule. BSA shall ensure that all Control Projects are designed and operated in accordance with sound engineering practices, approved plans and specifications, and engineering reports, to ensure the applicable activation limits will be achieved.

21. Program Manager. BSA shall contract a Program Manager whose primary functions shall include coordinating and overseeing the implementation of the Public Participation Plan, developing a plan to implement the Amended LTCP, and serving any additional roles set forth in BSA's August 2023 Capital Projects Program Management, Request for Proposal. BSA shall use best efforts to retain a Program Manager for the life of the Consent Judgment. BSA shall provide DEC

with the name and contact information for the Program Manager primary contact person, and provide notice within 10 Days in the event the Program Manager or primary contact is changed.

22. Proposal for Revised and/or Alternative Control Projects. No less than 12 Months prior to the Date of issuing a Notice to Proceed to Construction for any given Control Project, BSA may submit a proposal for review and approval by DEC, to revise and/or provide alternative Control Project(s), including to incorporate an Integrated Plan. Each proposal for a revised and/or alternative Control Project(s) shall:

a. Provide detailed project information such as sewer infrastructure rehabilitation, number of inflow source disconnections or storage capacity, the volume of storage or scope of sewer separation activities, and the anticipated discharge volume reduction or level of service.

b. Include an implementation schedule for completion of any revised/resubmitted and/or alternative Control Project(s). The proposed implementation schedules shall not be extended or postponed by more than six months past the complete construction date for the specific Control Project(s) BSA requests to revise and/or provide alternative Control Project(s) for. The proposed implementation schedules shall not extend or postpone the Date of Achievement of Complete Construction for Control Projects (although nothing in this Paragraph precludes BSA from requesting longer extensions in accordance with the procedures in Section XVIII (Modification));

c. Demonstrate that any revised and/or alternative Control Project(s) will achieve equal or better environmental benefits, as demonstrated by meeting the Typical Year CSO activation limits, by receiving waterbody, associated with the 2014 LTCP; and

d. Include a description of the public engagement process concerning the revised and/or alternative Control Project(s).

23. DEC's disapproval of a request under Paragraph 22 is subject to Section X (Dispute Resolution) of this Consent Judgment under the standard of review set forth in Subparagraph 77.a (Disputes Concerning Matters Accorded Record Review). For purposes of this Consent Judgment, DEC's approval of proposed revised and/or alternative Control Project(s) consistent with the criteria identified in subparagraphs 22.a) through (22.d) above shall be considered a non-material modification pursuant to Section XVIII of the Judgment.

24. Interim Effluent Limits. For the duration of this Consent Judgment, BSA shall comply with the interim limits for flow set forth in Appendix E.

a. For any additional interim effluent limits, such as BOD5 or TSS, not set forth in Appendix E on the Date of Filing of this Consent Judgment, BSA shall submit a request for such interim limits to DEC 60 Days prior to the need for those limits to go into effect.

b. Upon approval by DEC, such interim limits shall be incorporated into, and become an enforceable part of Appendix E.

25. Approval of Deliverables by DEC. After review of any plan, report, or other item that is required to be submitted for approval by DEC, DEC shall, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

26. If the submission is approved pursuant to Paragraph 25(a), BSA shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 25(b) or (c), BSA shall, upon written direction from DEC, take all actions required by the approved plan, report, or other item that DEC determines are technically severable from any disapproved portions.

27. If the submission is disapproved in whole or in part pursuant to Paragraph 25(c) or (d), DEC shall specify in its written notification the reasons for its disapproval and the requested corrective action and BSA shall, within 60 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, BSA shall proceed in accordance with the preceding Paragraph.

28. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, DEC may again require BSA to correct any

deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies.

29. DEC shall make a good faith effort to review and respond to each of the submittals BSA makes pursuant to this Judgment within 90 Days of their receipt. In the event DEC does not respond to BSA within that 90 Day period, BSA shall be entitled to an extension of any affected milestone date for an equal time period, commencing from the end of the 90 Days.

30. If BSA elects to invoke Dispute Resolution as set forth in Section XI (Dispute Resolution) concerning a decision by DEC to disapprove, approve on specified conditions, or modify a deliverable, BSA shall do so by sending a Notice of Dispute in accordance with Paragraph 72 within 30 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

31. All work plans, reports, and other materials required to be submitted to DEC under this Consent Judgment shall, upon approval, be enforceable under this Consent Judgment.

32. BSA shall post on its public-facing website all deliverables that have been approved within seven Days of approval by DEC, except to the extent that any such deliverable contains information that is exempted from public disclosure under state or federal law. Each submission shall remain on the public-facing website for a minimum of three years.

33. Permits. Where any compliance obligation under this Section requires BSA to obtain a federal, state, or local permit or approval, BSA shall submit timely

and Approvable applications and take all other actions necessary to obtain all such permits or approvals. Any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if BSA has submitted timely and Approvable applications and has taken all other actions necessary to obtain all such permits or approvals within the timeframes required by the issuing agency, may be considered a Force Majeure event pursuant to Section X.

VI. REPORTING REQUIREMENTS

34. Quarterly Progress Report. Upon the Effective Date until termination of this Judgment pursuant to Section XIX (Termination), BSA shall submit, by electronic mail to DEC at the addresses set forth in Section XV (Notices), quarterly reports by May 15 (covering the period January 1 through March 31), August 15 (covering the period April 1 through June 30), November 15 (covering the period July 1 through September 30) and February 15 (covering the period October 1 through December 31) of each year. If after the Effective Date, there is only 45 Days or less before the due date, the quarterly report shall not be required, and the information will be included in the next quarterly report.

35. The quarterly report shall include BSA's activities with regard to Section V (Compliance Requirements), along with all pertinent deliverables required to be submitted under this Consent Judgment, that occurred during the quarterly reporting period, and, at a minimum, shall set forth:

- a. The specific activities undertaken by BSA relating to completion

of work required under the compliance schedules specified in this Consent Judgment and identification of those requirements which have been accomplished since the previous quarterly report;

b. Any impediments encountered or anticipated by BSA in meeting the compliance schedules under this Consent Judgment, the steps that have been taken by BSA to overcome such impediments or proposed solutions, including the anticipated dates by which such steps will be taken to prevent future non-compliance;

c. The status of Bird Island WWTF and CSO outfall operations and maintenance, based on monthly facility operations reports, when CSO outfalls were operated, and CSO outfall maintenance activity logs;

d. If applicable, a list of Sewage Backups and Building/Private Property Backups with the following information:

- (1) approximate location, date, time, and volume of the release; CSO tributary area;
- (2) cause(s) or suspected cause(s) (e.g. pipe failure, blockage, wet weather, etc.); and
- (3) steps taken or planned by BSA to minimize recurrence of and mitigate the impact of the release;

e. The status of permit applications necessary for implementation of LTCP projects;

f. Reference to all the deliverables that have already been

submitted to EPA and DEC, if any, and those deliverables' dates of submission; and

g. A summary of costs incurred in implementing the LTCP since the previous quarterly report.

36. The quarterly report shall also include a description of any non-compliance with the requirements of this Consent Judgment and an explanation of the likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such non-compliance. If BSA violates, or has reason to believe that it may violate, any requirement of this Consent Judgment, BSA shall notify DEC of such violation and its likely duration, in writing, within 10 business Days of the Day BSA first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, BSA shall so state in the report. BSA shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day BSA becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves BSA of its obligation to provide the notice required by Section X (Force Majeure). If notice is made by BSA under Section X (Force Majeure), such notice shall also be deemed to have met the notice required by this Paragraph.

37. BSA shall post on its public-facing website all quarterly reports submitted to DEC within seven Days of submission, except to the extent that any

such report contains information that is exempted from public disclosure under state or federal law. Each submission shall remain on the public-facing website for a minimum of three years.

38. BSA may provide progress reports on a semi-annual basis instead of a quarterly basis upon written agreement by DEC and BSA.

39. Whenever any violation of this Consent Judgment or of any applicable permits or any other event affecting BSA's performance hereunder may pose an immediate threat to the public health or welfare or the environment, BSA shall notify DEC's Chief of the Compliance Assurance Section, Bureau of Water Compliance, and DEC's Regional Water Engineer, or such other person as later identified pursuant to Paragraph 96, via telephone and email in accordance with Section XV (Notices), as soon as possible, but no later than 24 hours after BSA first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

40. Each report submitted by BSA under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

41. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

42. The reporting requirements of this Consent Judgment do not relieve BSA of any reporting obligations required by the ECL or any other federal, state, or local law, regulation, permit, or other requirement.

43. Any information provided pursuant to this Consent Judgment may be used by DEC in any proceeding to enforce the provisions of this Consent Judgment and as otherwise permitted by law.

44. Semi-annual Progress Meetings. Representatives of DEC and BSA shall convene informally, including by remote videoconference, at least on a semi-annual basis pursuant to a mutually agreed-upon schedule to discuss BSA's ongoing progress under the Consent Judgment. The meeting should cover at least the following subjects:

- a. Progress in the implementation of the actions required by this Consent Judgment;
- b. Potential problems that may adversely affect progress in implementing the actions required by this Consent Judgment; and
- c. Where applicable, measures that BSA intends to take to correct problems and deficiencies encountered by BSA or found by DEC in its inspections.

VII. CIVIL PENALTY

45. In resolution of BSA's penalty liability for its violations set forth herein as of the Effective Date, both those concerning its failure to timely implement the LTCP and the 2024 Permit violations, BSA shall pay a statutory civil penalty and fund an Environmental Benefit Project ("EBP"), as set forth in Section VIII below. Within 30 Days after the Effective Date, BSA shall pay the sum of \$20,000 as a civil penalty to DEC. BSA shall send a check in that amount, via certified mail, return receipt requested, to:

Christopher Gore
Assistant Attorney General
Environmental Protection Bureau
NYS Office of the Attorney General
Main Place Tower, Suite 300A
350 Main Street
Buffalo, New York 14202
Christopher.Gore@ag.ny.gov

or such other recipient as the State shall designate.

VIII. ENVIRONMENTAL BENEFIT PROJECT

46. In addition to the Civil Penalty set forth in Paragraph 45 above, BSA shall expend at least \$100,000 ("EBP Funds") to perform the Environmental Benefit Project (EBP). Such project shall contribute to citizen engagement or education, or other benefits.

47. As more fully described in Appendix F, the EBP shall be to purchase and install playground equipment at Roosevelt Park in the City of Buffalo. The project(s) shall be carried out by the City of Buffalo Department of Public Works-

Parks Division ("Buffalo DPW"), who shall retain a contractor to install the equipment. Buffalo DPW shall review and approve the specifications and design for the equipment.

48. EBP funds may also be used for the purchase of educational materials regarding the hydrological history of the park area to increase public awareness of the interconnectedness with local waterways and ways that residents can prevent pollution of those waterways.

49. The EBP shall be performed consistent with DEC's EBP Policy, Policy 37 - Environmental Benefit Projects.

50. The playground equipment shall be purchased and installed no later than June 30, 2026.

51. If BSA expends less than \$100,000 in performing the EBP set forth in Appendix F, BSA shall pay, upon written demand by the State, the remaining funds to DEC as a civil penalty by check made payable to the order of the "New York State Department of Environmental Conservation," and sent via certified mail, return receipt requested to Assistant Attorney General Gore, at the address specified in paragraph 45 above, or such other recipient as the State shall designate.

52. BSA hereby certifies that:

a. BSA is not required to perform or develop the listed EBP by any law, regulation, or other legally binding obligation;

b. BSA is not required to perform or develop the listed EBP as injunctive relief in this or any other case;

c. BSA has not received, is not presently negotiating to receive, and will not seek in the future to receive, credit in any other enforcement action or legal proceeding based upon undertaking the listed EBP;

d. BSA has not obtained and will not obtain any grant funds based upon performance of the listed EBP; and

e. BSA was not required to perform the listed EBP, or any element thereof, at the time the violations were detected.

53. The EBP funds required by this section must be fully spent by no later June 30, 2026. In the event BSA fails to expend the funds by this timeframe any remaining unspent EBP amounts shall be paid as a civil penalty no later than two years and 50 Days after the Effective Date according to the terms of Paragraph 51 above.

IX. STIPULATED PENALTIES

54. BSA shall be liable for stipulated penalties to the DEC for violations of this Consent Judgment as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Judgment, including any work plan or schedule approved hereunder, according to all applicable requirements and within the specified time schedules established by or approved hereunder.

55. Late Payment of Civil Penalty. If BSA fails to pay the civil penalty required to be paid under Section VII (Civil Penalty) when due, BSA shall pay a stipulated penalty of \$1,000.00 per Day for each Day that the payment is late.

56. Compliance Milestones.

a. The following stipulated penalties shall accrue per violation per Day for each violation of the compliance requirements set forth in Paragraphs 12-23:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250.00	1st through 30th Day
\$ 1,000.00	31st Day and beyond

b. Interim Effluent Limits. The following stipulated penalties shall accrue per violation per Day for each violation of a requirement of Appendix E: or for each violation of any effluent limit requirement of BSA's permit specified below:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250.00	1st through 30th Day
\$ 1,000.00	31st Day and beyond

c. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI (Reporting Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250.00	1st through 30th Day
\$ 1,000.00	31st Day and beyond

d. EBP Compliance. The following stipulated penalties shall accrue for each Day BSA fails to comply with the timelines set forth in Paragraphs 53:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250.00	1st through 30th Day
\$500.00	31st Day and beyond

57. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Judgment.

58. BSA shall pay stipulated penalties to DEC within 30 Days of written demand made pursuant to Paragraph 92.

59. DEC may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Judgment.

60. Stipulated penalties shall continue to accrue as provided in Paragraph 57, during any Dispute Resolution, and need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of DEC that is not appealed to the Court, BSA shall pay accrued penalties determined to be owing, together with interest, to DEC within 30 Days of the effective date of the agreement or the receipt of DEC's decision or order.
- b. If the dispute is appealed to the Court and DEC prevails in whole or in part, BSA shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's

decision or order, except as provided in subparagraph c, below.

c. If any Party appeals this Court's decision, BSA shall pay all accrued penalties determined to be owing, together with interest, within 60 Days of receiving the final appellate court decision.

61. BSA shall pay stipulated penalties owing to the State, to the attention of Assistant Attorney General Gore, at the address specified in paragraph 45 above, or such other recipient as the State shall designate.

62. If BSA fails to pay stipulated penalties according to the terms of this Consent Judgment, BSA shall be liable for interest on such penalties, as provided for in CPLR § 5004, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit DEC from seeking any remedy otherwise provided by law for BSA's failure to pay any stipulated penalties.

63. The payment of penalties and interest, if any, shall not alter in any way BSA's obligation to complete the performance of the requirements of this Consent Judgment.

64. Non-Exclusivity of Remedy. Stipulated penalties are not DEC's exclusive remedy for violations of this Consent Judgment. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), DEC expressly reserves the right to seek any other relief it deems appropriate for BSA's violation of this Judgment or applicable law, including but not limited to an action against BSA for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a

violation of this Consent Judgment shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Judgment.

X. FORCE MAJEURE

65. “Force majeure,” for purposes of this Consent Judgment, means any event arising from causes beyond the control of BSA, of any entity controlled by BSA, or of BSA’s contractors, vendors, or suppliers, that delays or prevents the performance of any obligation under this Consent Judgment despite BSA’s best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that BSA exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure, such that any delay or non-performance is, and any adverse effects of the delay or non-performance are, minimized to the greatest extent possible. Subject to the Modification provisions in Section XVIII, “force majeure” does not include financial inability to perform any obligation under this Consent Judgment.

66. If any event occurs for which BSA will or may claim a force majeure, BSA shall provide notice by telephone or email to DEC in accordance with Section XV (Notices). The deadline for the initial notice is 15 Days after BSA first knew or should have known that the event would likely delay or prevent performance. BSA

shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by BSA knew or should have known.

67. Regardless of whether BSA seeks to assert a claim of force majeure concerning the event, within seven Days after the notice under Paragraph 66, BSA shall submit a further notice by mail or email to DEC in accordance with Section XV (Notices), that includes (a) an explanation and description of the event and its effect on BSA's completion of the requirements of the Consent Judgment; (b) a description and schedule of all actions taken or to be taken to prevent or minimize the delay and/or other adverse effects of the event; (c) if applicable, the proposed extension of time for BSA to complete the requirements of the Consent Judgment; (d) BSA's rationale for attributing such delay to a force majeure if it intends to assert such a claim; (e) a statement as to whether, in the opinion of BSA, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (f) all available proof supporting any claim that the delay was attributable to a force majeure.

68. Failure to submit a timely or complete notice or claim under Paragraph 66 or 67 regarding an event precludes BSA from asserting any claim of force majeure regarding that event, provided, however, that DEC may, in its unreviewable discretion, excuse such failure if it is able to assess to its satisfaction whether the event is a force majeure, and whether BSA has exercised its best efforts, under Paragraph 65.

69. After receipt of any claim of force majeure, DEC shall notify BSA of its determination whether BSA is entitled to relief under Paragraph 65, and, if so, the excuse of or the extension of time for performance of the obligations affected by the force majeure. An excuse of, or extension of the time for performance of, the obligations affected by the force majeure does not, of itself, excuse or extend the time for performance of any other obligation.

70. If BSA elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution) which shall be subject to the standard of review set forth in Subparagraph 77.a (Disputes Concerning Matters Accorded Record Review), it shall do so no later than 15 Days after receipt of DEC's notice. In any such proceeding, BSA has the burden of proving that it is entitled to relief under Paragraph 65, that its proposed excuse or extension was or will be warranted under the circumstances, and that it complied with the requirements of Paragraphs 65 - 70. If BSA carries this burden, the delay or non-performance at issue shall be deemed not to be a violation by BSA of the affected obligation of this Consent Judgment identified to DEC and the Court.

XI. DISPUTE RESOLUTION

71. Unless otherwise expressly provided for in this Consent Judgment, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Judgment. BSA's failure to seek resolution of a dispute under this Section concerning an issue of which it had notice and an opportunity to dispute under this Section prior to an

action by DEC to enforce any obligation of BSA arising under this Judgment precludes BSA from raising any such issue as a defense to any such enforcement action.

72. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Judgment shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when BSA sends DEC a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by DEC shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, BSA invokes formal dispute resolution procedures as set forth below.

73. Formal Dispute Resolution. BSA shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DEC a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting BSA's position and any supporting documentation relied upon by BSA.

74. DEC shall send BSA its Statement of Position within 45 Days of receipt of BSA's Statement of Position. DEC's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that

position and any supporting documentation relied upon by DEC. DEC's Statement of Position is binding on BSA, unless BSA files a motion for judicial review of the dispute in accordance with the following Paragraph.

75. Judicial Dispute Resolution. BSA may seek judicial review of the dispute by filing with the Court and serving on DEC in accordance with Section XV (Notices), a motion requesting judicial resolution of the dispute. The motion (a) must be filed within 30 Days of receipt of DEC's Statement of Position pursuant to the preceding Paragraph; (b) may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 72, unless the Plaintiffs raise a new issue of law or fact in the Statement of Position; (c) shall contain a written statement of BSA's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and (d) shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Judgment.

76. DEC shall respond to BSA's motion within the 30 Days. BSA may file a reply memorandum within seven Days of receipt of DEC's response. The Parties' submissions shall not exceed the allowable page limits under the CPLR and Uniform Rules for the Supreme Court.

77. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Judgment, in any dispute brought under Paragraph 72 pertaining to the (i) adequacy or appropriateness of

submissions, plans, procedures to implement plans, schedules or any other items requiring approval by DEC; (ii) the adequacy of the performance of work undertaken pursuant to this Consent Judgment; and (iii) all other disputes that are accorded review on the administrative record under applicable principles of administrative law, BSA shall have the burden of demonstrating, based on the administrative record, that DEC's position is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Judgment, in any other dispute brought under Paragraph 72, BSA shall bear the burden of demonstrating that its position complies with this Judgment and better furthers its Objectives.

78. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of BSA under this Consent Judgment, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but BSA's obligation to pay shall be stayed pending resolution of the dispute as provided in Paragraph 60. If BSA does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION

79. DEC and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Judgment, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of required activities;
- b. verify any data or information submitted pursuant to this Consent Judgment;
- c. obtain samples and, upon request, splits of any samples taken by BSA or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess BSA's compliance with this Consent Judgment.

80. Upon request, BSA shall provide DEC, or its authorized representatives, splits or duplicates of any samples taken by BSA. Upon request, DEC shall provide BSA splits or duplicates of any samples taken by DEC.

81. Until five years after the termination of this Consent Judgment, BSA shall retain and preserve, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to BSA's performance of its obligations under this Consent Judgment. This information-retention requirement

shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by DEC, BSA shall provide DEC with copies of any documents, records, or other information required to be maintained under this Paragraph. Notwithstanding any other provision herein, BSA and any of its contractors may retain any documents, records or other information solely in electronic or digital form, and destroy any paper or other hard form thereof.

82. At the conclusion of the information-retention period provided in the preceding Paragraph, BSA shall notify DEC at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by DEC shall deliver any such documents, records, or other information to DEC. BSA may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by New York law. If BSA asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by BSA. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Judgment shall be withheld on grounds of privilege.

83. BSA may also assert that information required to be provided under this Section is protected as Confidential Information under New York's Freedom of Information Law ("FOIL"). As to any information that BSA seeks to protect as Confidential Information, BSA shall follow the procedures set forth in 6 NYCRR Part 616.

84. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by DEC to applicable state laws, regulations, or permits, nor does it limit or affect any duty or obligation of BSA to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

85. This Consent Judgment resolves only the civil claims of DEC and the State of New York for the violations alleged in the Complaint filed in this action through the Date of Filing.

86. DEC reserves all legal and equitable remedies available to enforce the provisions of this Consent Judgment. This Consent Judgment shall not be construed to limit the rights of DEC or the State of New York to obtain penalties or injunctive relief under ECL Article 17 or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 88. DEC reserves all legal and equitable remedies to address any conditions if there is or may be an imminent and substantial endangerment to the

public health or welfare or the environment arising at, or posed by, BSA's Facility, whether related to the violations addressed in this Consent Judgment or otherwise.

87. In any subsequent administrative or judicial proceeding initiated by DEC for injunctive relief, civil penalties, other appropriate relief relating to the Facility or BSA's violations, BSA shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (*res judicata*), issue preclusion (*collateral estoppel*), claim-splitting, or other defenses based upon any contention that the claims raised by DEC in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 85.

88. This Consent Judgment is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. BSA is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and BSA's compliance with this Consent Judgment shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. DEC does not by its consent to the entry of this Consent Judgment warrant or aver in any manner that BSA's compliance with any aspect of this Consent Judgment will result in compliance with any other provisions of federal, State, or local laws, regulations, or permits.

89. This Consent Judgment does not limit or affect the rights of BSA or of DEC against any third parties not party to this Consent Judgment, nor does it limit

the rights of third parties not party hereto, except as otherwise provided by applicable law.

90. This Consent Judgment shall not be construed to create rights in, or grant any cause of action to, any third party not party hereto.

XIV. COSTS

91. The Parties shall bear their own costs of this action, including attorneys' fees, except that DEC shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by BSA.

XV. NOTICES

92. Unless otherwise specified in this Judgment, whenever notifications, submissions, or communications are required by this Consent Judgment, they shall be made in writing and sent by mail or email, with a preference for email, addressed as follows:

As to the State by email: Andrew.Gershon@ag.ny.gov
Christopher.Gore@ag.ny.gov

As to the State by mail:

Christopher C. Gore
Assistant Attorney General
Environmental Protection Bureau
New York Office of the Attorney General
350 Main Street, Suite 300A
Buffalo, NY 14202

As to the DEC by email: Ryan.Waldron@dec.ny.gov; and
Damianos.Skaros@dec.ny.gov

Teresa.Mucha@dec.ny.gov

As to the DEC by telephone:

Ryan Waldron, P.E.
Chief, Compliance Assurance Section
(518) 402-8244

AND

Damianos Skaros
Regional Water Engineer, Region 9
(716) 851-7070

As to the DEC by mail:

Ryan Waldron, P.E.
Chief, Compliance Assurance Section
Division of Water
New York State Department of Environmental
Conservation
625 Broadway, 4th Floor
Albany, NY 12233

AND

Teresa Mucha, Esq.
Regional Attorney
DEC Region 9
700 Delaware Avenue
Buffalo, NY 14029

As to BSA by email:

criley@buffalosewer.org
rnogle@buffalosewer.org

As to BSA by telephone:

Rosaleen Nogle, P.E.
Principal Sanitary Engineer
(716) 851-4664

As to BSA by mail:

Rosaleen Nogle, P.E.
Principal Sanitary Engineer
Buffalo Sewer Authority
1038 City Hall
65 Niagara Square

-51-

Buffalo, New York 14202

Charles Riley
Executive Secretary
Buffalo Sewer Authority
1038 City Hall
65 Niagara Square
Buffalo, New York 14202

Cheryl Colston
General Counsel
Buffalo Sewer Authority
65 Niagara Square
Buffalo, New York 14202

AND

Cavette A. Chambers, Esq.
Corporation Counsel
Department of Law
1101 City Hall
65 Niagara Square
Buffalo, New York 14202

93. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

94. Notices submitted pursuant to this Section shall be deemed submitted upon transmission by email, unless otherwise provided in this Consent Judgment or by mutual agreement of the Parties in writing.

XVI. EFFECTIVE DATE

95. The Effective Date of this Consent Judgment shall be the date upon which it is so ordered by the Court, as recorded on the Court's docket; provided, however, that BSA hereby agrees that it shall be bound to perform duties scheduled

to occur prior to the Effective Date. In the event DEC withdraws or withholds consent to this Consent Judgment before entry, or the Court declines to enter it, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVII. RETENTION OF JURISDICTION

96. The Court shall retain jurisdiction over this case until termination of this Consent Judgment, for the purpose of resolving disputes arising hereunder or entering modification orders, pursuant to Sections XI (Dispute Resolution) and XVIII (Modification), or effectuating or enforcing compliance with its terms.

XVIII. MODIFICATION

97. The terms of this Consent Judgment, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Judgment, it shall be effective only upon approval by the Court. Material modifications include, but are not limited to, changes that would extend or postpone the Date of Achievement of Complete Construction for Control Projects. Non-material modifications shall be enforceable as part of this Consent Judgment and filed with the Court and posted on BSA's website, within five Days of the Parties' final signature agreeing to the modification. Non-material modifications may include, but are not limited to, changes to the interim project deadlines set forth in the Amended LTCP, reprioritization of approved Control Projects, and approved revised and alternative Control Projects pursuant to Paragraphs 22 and 23.

98. BSA shall make all modification requests in writing within 20 Days after becoming aware of the potential for the need to modify a compliance requirement under Section V, and in any event no later than 60 Days prior to the applicable compliance deadline. Any such modification requests shall include the justification for the modification.

99. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or other delays caused by inadequate Facility planning or plans and specifications on the part of BSA shall not be cause for extension or modification of any required compliance date in this Consent Judgment.

100. DEC shall not unreasonably deny, suspend, withhold or delay any modification request by BSA based on the termination, suspension, withholding or denial of any federal or state funding that was expected to be available, approved, or granted to BSA, provided BSA takes all required and reasonable steps to obtain said funding.

101. Any disputes concerning modification of this Consent Judgment shall be resolved pursuant to Section XI (Dispute Resolution) provided, however, that, instead of the burden of proof provided by Paragraph 77, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with CPLR § 5015.

XIX. TERMINATION

102. After BSA has completed the requirements of Section V (Compliance Requirements), has complied with all other requirements of this Consent Judgment,

and has paid the civil penalty and any accrued stipulated penalties as required hereunder, BSA may serve DEC with a Request for Termination, stating that BSA has satisfied those requirements, together with all necessary supporting documentation.

103. Following DEC's receipt of BSA's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether BSA has satisfactorily complied with the requirements for termination. If DEC agrees that the Judgment may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating it, together with a stipulation of discontinuance with prejudice.

104. If DEC does not agree that the Judgment may be terminated, BSA may invoke Dispute Resolution under Section XI. However, BSA shall not seek Dispute Resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

XX. SIGNATORIES/SERVICE

105. Each undersigned representative of BSA, and of DEC identified on the signature pages below, certifies that that person is fully authorized to enter into the terms and conditions of this Consent Judgment and to execute and legally bind the Party that person represents to this document.

106. This Consent Judgment may be signed in counterparts, and its validity shall not be challenged on that basis. BSA agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Judgment

and to waive the formal service requirements set forth in CPLR Article 3, including, but not limited to, service of a summons. BSA need not file an answer to the Complaint unless or until the Court expressly declines to enter this Consent Judgment.

XXI. INTEGRATION

107. This Consent Judgment and all its attachments and appendices, including deliverables that are subsequently approved pursuant to this Judgment, constitutes the entire agreement among the Parties regarding its subject matter and supersedes all prior representations, agreements and understandings, whether oral or written, concerning its subject matter.

XXII. HEADINGS

108. Headings to the Sections and Subsections of this Consent Judgment are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Judgment.

XXIII. FINAL JUDGMENT

109. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a final judgment of the Court as to the DEC and BSA.

XXIV. APPENDICES

110. The following Appendices are attached to and part of this Consent Judgment:

“Appendix A” is LTCP Selected Alternative memo;

“Appendix B” is the 2024 Bridging Document;

“Appendix C” is the 2024 Control Project Schedule;

“Appendix D” is the Public Participation Plan;

“Appendix E” is the Interim Effluent Limits; and

“Appendix F” is the EBP

FOR THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION COMMISSIONER and NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION:

LETITIA JAMES
Attorney General of New York

Dated: September 19, 2025

Christopher Gore

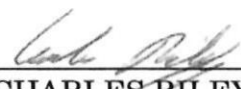
CHRISTOPHER GORE
Assistant Attorney General
Environmental Protection Bureau
NYS Office of the Attorney General
Main Place Tower, Suite 300A
350 Main Street
Buffalo, New York 14202
(716) 852-6295

FOR BUFFALO SEWER AUTHORITY:

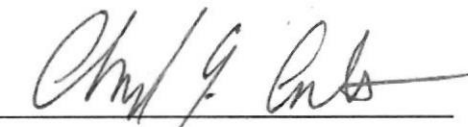
Dated: August 19, 2025


ROSALEEN NOGLE, P.E.
Principal Sanitary Engineer
Buffalo Sewer Authority
1038 City Hall
65 Niagara Square
Buffalo, New York 14202

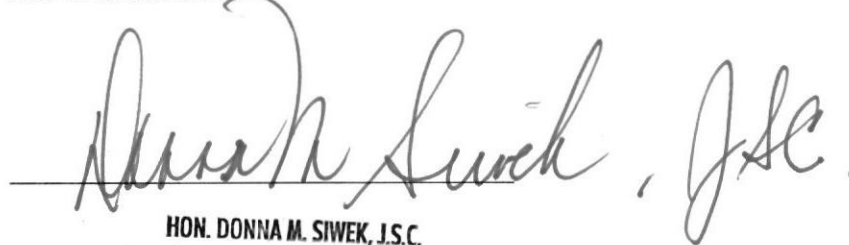
Dated: August 18, 2025


CHARLES RILEY
Executive Secretary
Buffalo Sewer Authority
1038 City Hall
65 Niagara Square
Buffalo, New York 14202

Dated: August 18, 2025


CHERYL COLSTON, ESQ.
General Counsel
Buffalo Sewer Authority
65 Niagara Square
Buffalo, New York 14202

SO ORDERED:


HON. DONNA M. SIWEK, J.S.C.

DATED: October 17, 2025