

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Buffalo Sewer Authority
1038 City Hall
Buffalo, New York 14202-3310

SPDES Permit No. NY0028410

Respondent

Amended Administrative Order for Compliance pursuant to Sections 308(a) and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318(a) and 1319(a).

AMENDED

ADMINISTRATIVE ORDER

CWA-02-2014-3033

(Amends CWA-02-2012-3024)

This Amended Administrative Order CWA-02-2014-3033 amends Administrative Order CWA-02-2012-3024 to include: developments in the enforcement action since the March 9, 2012 effective date of Administrative Order CWA-02-2012-3024; updated General Provisions to reflect current practice; and to correct a date in the Findings of Fact and Findings of Violation. The Amendments to Administrative Order CWA-02-2012-3024 reflect the developments leading up to and including the approval of Buffalo Sewer Authority's Combined Sewer Overflow Long Term Control Plan and associated implementation schedule by the United States Environmental Protection Agency and the New York State Department of Environmental Conservation. Amended provisions can be found in Paragraphs 4, 11 and 13-20 of the Findings of Fact and Findings of Violation, Paragraphs 2.a., 2.f., 3, 3.a., 3.d.ii of the Ordered Provisions and Paragraphs 1-8 of the General Provisions.

STATUTORY AUTHORITY

The following Findings of Violation and Order for Compliance ("Order") are made and issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). This Authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311 (a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement

authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.

3. Section 308 of the Act, 33 U.S.C. § 1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. § 1342.
4. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include an individual, corporation, partnership, association or municipality.
5. "Municipality" is defined by Section 502(4) of the CWA, 33 U.S.C. § 1362(4), to include among other things, a city, town, borough, county, parish, district, associations, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States.
9. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
10. Section 402(q) of the CWA, 33 U.S.C. § 1342(q), provides that each permit, order, or decree issued pursuant to the chapter after December 21, 2000, for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Policy ("CSO Policy") signed by the Administrator on April 11, 1994.
11. The CSO Policy states that "permittees with CSOs are responsible for developing and implementing long-term CSO control plans that will ultimately result in compliance with the requirements of the CWA."
12. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

FINDINGS OF FACT AND FINDINGS OF VIOLATION

1. The Buffalo Sewer Authority (“BSA” or “Respondent”), is a public benefit municipal corporation, organized and existing under the laws of the State of New York, and located in Buffalo, New York. BSA has authority, control over and operates the sewer system within its boundaries, including, but not limited to the combined sewer system, the sanitary sewer system, and the related wastewater treatment plant.
2. BSA is a “person” and “municipality” within the meaning of Sections 502(5) and 502(4) of the CWA, 33 U.S.C. §§ 1362(5) and 1362(4).
3. BSA has discharged and continues to discharge “pollutants” within the meaning of Sections 502(6) and 502(12) of the CWA, 33 U.S.C. §§ 1362(6) and 1362(12), from the Buffalo wastewater treatment plant and sewer system through “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14) into the Niagara River, Black Rock Canal, Erie Basin, Buffalo River, Scajaquada Creek, Cazenovia Creek, and Cornelius Creek, each of which is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
4. The NYSDEC, under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b), issued SPDES Permit No. NY0028410 (the “SPDES Permit”) to BSA, with an effective date of July 1, 1999. The NYSDEC renewed the SPDES permit on February 3, 2004, on June 25, 2009, and again on December 31, 2013. It is scheduled to expire on June 30, 2019. The SPDES Permit authorizes BSA to discharge pollutants from a single wastewater treatment plant outfall and fifty-eight (58) combined sewer overflow structures (“CSO structures”) at locations specified in the SPDES Permit, subject to certain limitations and conditions.
5. The Schedule of Compliance in the July 1, 1999 SPDES Permit provided in pertinent part as follows:

“Development of Abatement Plan for Combined Sewer Overflow

The permittee shall develop a combined sewer overflow abatement facility plan in accordance with the Phase I Long Term CSO Control Plan requirements specified in the USEPA Combined Sewer Overflow Policy (Federal Register Vo. 59, No. 75 4/19/94).

This Abatement Plan shall contain all of the Long Term Plan elements specified in Section II C of the National CSO Policy, and further delineated in the USEPA document, “Combined Sewer Overflows, Guidance for Long-Term Control Plan” dated September, 1995. The permittee may choose either the “Presumption” or the “Demonstration” approach for the evaluation of alternatives.

The Abatement Plan should integrate the pollutant reduction achievable by the implementation of the CSO Best Management Practices (BMPs) as required on pages 19-21 of this permit into the long term control plan. The Department will consider work or studies already completed or currently in progress for integration into the long term control plan.

The permittee shall submit a completed CSO Abatement Facility Plan including a schedule of implementation to the Department.

The permittee shall report to the NYSDEC progress/status of plan development in intervals not to exceed 90 days.

Upon approval of the CSO Abatement Facility Plan, the NYSDEC will propose a SPDES permit modification, pursuant to Uniform Procedures – 6 NYCRR – Part 621, to include the schedule of implementation.”

6. The SPDES Permit was modified October 2, 2001 to, among other changes, modify the deadline for submittal of a CSO Abatement Plan (hereinafter either “Abatement Plan,” “combined sewer overflow abatement facility plan,” “Long-Term Control Plan,” “LTCP” or “updated LTCP”) from July 1, 2001 to July 1, 2002. On August 29, 2002, the CSO Abatement Plan deadline was amended, by permit modification, again to July 1, 2003. On January 12, 2004, the CSO Abatement Plan deadline was again amended, by permit modification, to February 1, 2004.
7. BSA failed to submit the required Abatement Plan by February 1, 2004. BSA did not submit an Abatement plan until July 14, 2004, 164 days late.
8. BSA’s failure to timely submit the required Abatement Plan is a violation of the SPDES Permit and is, therefore, a violation of Section 301 of the CWA, 33 U.S.C. § 1311.
9. Under a cover letter dated April 20, 2006, the NYSDEC notified the BSA that the Abatement Plan submitted by BSA on July 14, 2004 was not acceptable in that it would not meet the water quality objectives of the CSO Control Policy and had therefore failed to satisfy the SPDES Permit requirements of a combined sewer overflow abatement facility plan, as described in paragraph 5 above. This NYSDEC cover letter required that BSA revise its LTCP accordingly and submit it to the NYSDEC by July 31, 2006. BSA failed to submit such a revised LTCP to the NYSDEC by July 31, 2006.
10. Accordingly, EPA, NYSDEC, the U. S. Department of Justice (“USDOJ”), and the New York State Office of Attorney General commenced discussions with BSA to settle the violation. The settlement was to be embodied in a Consent Decree, under the auspices of federal court, for the development and implementation of a LTCP.
11. Since those discussions were on-going, the SPDES Permit was modified, effective January 1, 2010, to include Section VIII entitled “CSO LONG-TERM CONTROL PLAN,” which states the following:

“BSA submitted a CSO Long-Term Control Plan (LTCP) in July 2004 in accordance with the requirements of their SPDES permit. Currently, the USEPA, USDOJ, NYSDEC and the permittee are engaged in negotiations concerning the LTCP, and anticipate that these negotiations will result in the entry of a Consent Decree. The Consent Decree will govern the permittee’s obligations in ensuring that the WWTF and the combined sewer overflow discharges comply with the requirements of the Clean Water Act and the 1994 CSO Control Policy. This permit may be modified upon the ratification of the Consent Decree in accordance with 6 NYCRR Part 621.”
12. To date, however, the parties have not reached a settlement nor entered into a Consent Decree.

13. On March 9, 2012, EPA, Region 2 issued an Administrative Order, Docket No. CWA-02-2012-3024 (“2012 Order”), to BSA, to address violations of the CWA (33 U.S.C. § 1251 et seq) and NYSDEC SPDES Permit number NY0028410. The 2012 Order requires that BSA update its CSO LTCP and that the Updated CSO LTCP include a schedule for the design, construction, and implementation of all control/treatment measures selected by BSA, to be completed as expeditiously as practicable, following any applicable environmental impact assessment review, pursuant to the New York State Environmental Quality Review Act, but in any event by no later than December 31, 2027.
14. In accordance with the 2012 Order, BSA submitted an Updated CSO LTCP, dated April 30, 2012, to the EPA and the NYSDEC for review and approval. Pursuant to “Ordered Provisions,” Item 2.e of the 2012 Order, based on a joint review of the Updated CSO LTCP, the EPA and the NYSDEC declined to approve the Updated CSO LTCP and provided comments to BSA in a letter dated December 6, 2012.
15. The EPA and the NYSDEC met with BSA on February 12, 2013 to discuss the EPA’s and the NYSDEC’s comments. BSA followed up with a letter dated March 1, 2013 which, among other things, specified that BSA would submit a No Feasible Alternatives (“NFA”) analysis and submit its Green Infrastructure (“GI”) Master Plan to the Agencies by August 2, 2013, and would meet with the Agencies on or about August 15, 2013 to discuss those submittals.
16. Technical representatives of the EPA and the NYSDEC met with BSA to specifically discuss BSA’s GI Master Plan on August 20, 2013. BSA followed up by providing the EPA and the NYSDEC with further information on its GI Master Plan on August 28, 2013. The EPA and the NYSDEC determined that an analogous technical meeting to discuss BSA’s NFA analysis was not needed and indicated this to BSA in an email transmission dated September 11, 2013.
17. In a letter dated October 23, 2013 from EPA to BSA, EPA provided BSA with final written comments on BSA’s Updated CSO LTCP. BSA was given until January 10, 2014 to submit its final revised CSO LTCP to EPA and NYSDEC. EPA’s letter dated October 23, 2014 required that BSA provide a detailed implementation schedule as part of its final revised CSO LTCP and, based partly on work to be completed at the BSA wastewater treatment plant which was not originally contemplated, allowed a twenty year implementation schedule.
18. On January 10, 2014, BSA submitted its final revised CSO LTCP to EPA and to NYSDEC for review and approval. The final revised CSO LTCP includes a twenty year schedule.
19. In a letter dated March 18, 2014, EPA and NYSDEC approved BSA’s final revised CSO LTCP. The approved CSO LTCP includes a twenty year implementation schedule, which is beyond the final compliance date of December 31, 2027, required by the EPA’s 2012 Order.
20. Therefore, based on the above, EPA is issuing Amended Administrative Order, Docket No. CWA-02-2014-3033, to incorporate a twenty year implementation schedule and a final compliance date of March 18, 2034.

ORDERED PROVISIONS

Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a), and in accordance with Section 402(q) of the CWA, 33 U.S.C. § 1342 (q), it is hereby ORDERED that:

1. Immediately upon receipt of the original copies of this Order, a responsible official of BSA shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Chief, Compliance Section, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope to the address listed below.
2. Development of Updated Long Term Control Plan: BSA shall revise and implement an approved Updated LTCP consistent with the requirements of the CSO Policy and applicable State law and regulation. The Updated LTCP shall provide for the construction and implementation of all wastewater treatment plant (“WWTP”) and sewer system improvements and other measures necessary to ensure that: (i) CSO discharges from all CSO discharge outfalls comply with the technology-based and water quality-based requirements of the CWA, the CSO Control Policy and state law and regulation; and (ii) bypasses at the WWTP are in compliance with the bypass conditions in 40 C.F.R. § 122.41(m), 327 IAC 5- 2-8(11), and shall demonstrate that there are no feasible alternatives to the remaining bypasses, in accordance with Section II.C.7 of the CSO Control Policy.
 - a. By no later than April 30, 2012, BSA shall submit to EPA and NYSDEC an Updated LTCP. The schedule included in the Updated LTCP shall require the design, construction, and implementation of all control/treatment measures selected by BSA as expeditiously as practicable, following any applicable environmental impact assessment review pursuant to the New York State Environmental Quality Review Act (“SEQR review”), but in any event by no later than March 18, 2034.
 - b. The Updated LTCP shall include, at a minimum:
 - i. An update of the system characterization information, receiving water characterization information, existing conditions information, CSO control objectives, and any other information presented in the 2004 LTCP that is no longer current;
 - ii. BSA’s previous screening and subsequent evaluation of individual CSO control technologies and site-specific CSO controls. The Updated LTCP shall: (1) reassess the results of that original evaluation in light of the applicability of recreation-protective bacteria standards in BSA’s receiving waters; (2) include, as appropriate, new technologies and controls (such as green infrastructure (“GI”) and bio-ballasted flocculation treatment) not considered in the 2004 LTCP; and (3) in particular, carry out a new evaluation of a range of updated system-wide alternatives. Together, BSA’s prior and updated system-wide alternatives evaluation shall include a sufficiently wide range of alternatives for eliminating, reducing, or treating CSO discharges, and for eliminating or reducing bypass discharges (except as permitted in the bypass conditions in 40 C.F.R. § 122.41(m) and 327 IAC 5-2-8(11)). The updated evaluation shall consider the costs and effectiveness (in terms of reduction in number of overflow events, overflow volume reduction, pollutant loading reductions, water quality improvements, etc.) predicted to result from implementation of each of the updated system-wide alternatives.

- iii. In evaluating the relative performance of the updated system-wide alternatives and in selecting a preferred alternative, BSA shall give the highest priority to controlling overflows to sensitive areas as required under the CSO Control Policy, at section II.C.3.
- iv. BSA's Updated LTCP shall include past and current alternative evaluation efforts that together include at a minimum: (1) taking no-action; (2) complete sewer separation (3) partial separation of various portions of the combined sewer system; (4) installation of various sizes of storage or equalization basins at the Buffalo Sewer Authority WWTP and/or in the sewer system; (5) construction of new secondary or advanced wastewater treatment plants; (6) construction of increased treatment capacities at the existing facilities; (7) construction of additional facilities (such as high rate treatment or ballasted flocculation facilities or its equivalent) for providing primary treatment or better than primary treatment of discharges from CSO discharge outfall structures; (8) construction of new intercepting sewers from the sewer system to the facilities; (9) construction of facilities for providing disinfection (and dechlorination, if necessary) of CSO discharges; (10) construction of facilities for removing floatables from CSO discharges; (11) construction of relief sewers; (12) relocation of CSO discharge outfall structures; (13) implementation of pretreatment measures to reduce flows and/or pollutants discharged into the sewer system from industrial users; (14) consideration of the use of GI where feasible, and (15) construction and/or implementation of combinations of these alternatives. These evaluations shall be carried out in accordance with Chapter 3 of EPA's "Combined Sewer Overflows Guidance for Long-Term Control Plan."
- v. The Updated LTCP shall describe BSA's prior technology screening assessments and shall include, at a minimum, BSA's evaluation of the technical feasibility and applicability of each alternative or combination of alternatives at each CSO discharge outfall or grouping of CSO discharge outfalls. Where necessary, BSA shall update said assessments in light of the applicability of recreation-protective bacteria standards in BSA's receiving waters.
- vi. BSA's updated evaluation of system-wide alternatives shall include:
 1. An evaluation of a range of "sizes" of each updated system-wide alternative that will, for the typical year achieve an average volume of wet weather percent capture from 75 to 100 percent and reduce the average number of untreated CSO Discharge events to 0, 1-3, 4-7 and 8-12 per year. The updated LTCP shall include a detailed description of the 12 month rainfall record that BSA has utilized in developing its Updated LTCP, and that BSA will utilize in implementing its Post Construction Monitoring Program. The Updated LTCP shall describe in detail BSA's analysis of its available long term rainfall record, its basis for selecting its "typical year," and, in the event that BSA selects a "modified year" as its "typical year," shall discuss in detail all modifications made to the actual rainfall record to arrive at the "modified" rainfall record. The updated LTCP shall include a detailed tabular summary of the "modified" rainfall record, such that it is clear exactly what rainfall record shall be used in implementing the PCMP;

2. A determination of the estimated “project costs,” as that term is described on pages 3-49 through 3-51 of the EPA’s “Combined Sewer Overflows Guidance for Long-Term Control Plan,” for each size of each updated system-wide alternative. The determination of the estimated “project costs” shall include: (a) “capital costs,” “annual operation and maintenance costs,” and “life cycle costs,” as those terms are described on pages 3-49 through 3-51 of EPA’s “Combined Sewer Overflows Guidance for Long-Term Control Plan;” and (b) an itemization of the “capital costs” and “annual operation and maintenance costs” used to determine the total “project costs” for each separate component of each alternative or combination of alternatives; and
 3. An evaluation, using a validated collection system model, of the expected reduction in number of CSO events, CSO discharge volume and pollutant discharge quantity from each CSO discharge point for each size of each updated system-wide alternative. The evaluation shall include, at a minimum, an analysis of the improvement in every pollutant of concern, which are: fecal coliform in all receiving waters, and DO/BOD/SOD in the Buffalo River, Scajaquada Creek, and the Black Rock Canal.
- vii. For each system-wide alternative, BSA’s assessment shall include an evaluation, using water quality models, of the expected water quality improvements in the receiving waters that will result from implementation of each updated system-wide alternative. The evaluation shall include, at a minimum, an analysis of the improvement in every pollutant of concern in that receiving water.
 - viii. For each updated system-wide alternative, BSA shall include a cost-performance analysis, such as a “knee of the curve” analysis, for each alternative or combination of alternatives that will allow for the comparison of the costs to: (1) the associated expected water quality improvements; (2) the reduction of CSO discharge and bypass discharge volume; (3) the reduction in CSO discharge and bypass discharge events; (4) the increase in percent wet weather capture; and/or (5) the reduction in pollutant loading from CSO discharge and bypass discharge events.
 - ix. The Updated LTCP shall include a financial capability analysis that complies with USEPA’s “Combined Sewer Overflows – Guidance for Financial Capability Analysis and Schedule Development” February 1997).
 - x. The Updated LTCP shall include the selection of CSO control measures, including the construction of all sewer system and facility improvements necessary to ensure compliance with the technology-based and water quality-based requirements of the CWA, state law and regulation and BSA’s SPDES permit. The Updated LTCP shall include the selection of bypass discharge control measures, so as to ensure that all remaining bypasses are in compliance with the bypass conditions in 40 C.F.R. § 122.41(m), 327 IAC 5- 2-8(11), and shall demonstrate that there are no feasible alternatives to the remaining bypasses, in accordance with Section II.C.7 of the CSO Control Policy.
 - xi. The Updated LTCP shall include an expeditious schedule for the design, construction, and implementation of all CSO control measures selected by BSA. If it is not possible for BSA to design and construct all measures simultaneously, the Updated LTCP shall include a phased schedule based on the relative

importance of each measure, with highest priority being given to eliminating discharges to sensitive areas and to those projects which most reduce the discharge of pollutants. The schedule shall specify critical construction milestones for each specific measure, including, at a minimum, dates for: (1) submission of applications for all permits required by law; (2) start of design; (3) commencement of construction; (4) completion of construction; (5) completion of construction; and (6) achievement of full operation.

c. The alternatives evaluated should include the use of GI wherever feasible to reduce CSO volumes and handle separated storm water. GI shall generally mean systems and practices that use or mimic natural processes to infiltrate, evapotranspire, and/or harvest storm water on or near the site where it is generated. GI applications and approaches that may be considered include, but are 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. EPA and NYSDEC encourage BSA to utilize GI projects as appropriate to reduce or replace gray infrastructure projects included in the Updated LTCP provided that any GI project proposed is anticipated to provide substantially the same or greater level of control as the alternative gray infrastructure project. Should BSA rely on other entities to implement GI projects, BSA must have in place agreements as appropriate, to ensure proper operation and maintenance of the GI project. For any GI project submitted as part of the Updated LTCP, BSA shall submit to EPA and NYSDEC a detailed GI project proposal outlining each proposed project.

- i. The GI project proposal shall be consistent with this Administrative Order and shall at a minimum include the following for each project:
 1. Data on location, sizing, design, and the performance criteria expected to be achieved with the implementation of the GI project, utilizing the information and models that BSA used in developing the Updated LTCP, and any monitoring information used in formulating the proposal; along with a demonstration of the long term effectiveness and performance expected to be achieved with implementation of the project;
 2. A description of the work required to implement the GI project and a schedule for completion of this work and implementation of the project that is consistent with this Administrative Order and the date set forth herein in Paragraph 2(a) for completion of construction and full implementation of all remedial and control measures;
 3. A description of the proposed ownership of and access to the GI project, and should BSA rely on other entities to implement the GI project, BSA must explain what agreements will be necessary to ensure proper operation and maintenance of the GI project (i.e., permanent access, sufficient control over key aspects of the project), and how they will be enforced to ensure proper operation and maintenance of the GI project; and
 4. A description of any post-construction monitoring and modeling to be performed that is necessary to determine whether the performance criteria set forth, as noted above, will be met upon completion and implementation of the GI project.

- ii. Upon review of BSA's GI project proposal, EPA and NYSDEC will comment, approve, disapprove, or approve in part, the proposal:
 1. BSA shall implement each GI project approved by EPA and NYSDEC in accordance with the provisions and schedule in the approved proposal;
 2. If the GI project proposal is approved in part, BSA shall, upon written direction from EPA and NYSDEC, take all actions in the approved portion of the GI proposal that EPA and NYSDEC determine are technically severable from any disapproved portions. For the disapproved portions, BSA shall, within 90 Days, correct all deficiencies and resubmit the proposal for approval. If the resubmission is approved in whole or in part, BSA shall proceed in accordance with this subparagraph; or
 3. If the GI project proposal is disapproved, EPA and NYSDEC's decision is final. For each project which is disapproved, BSA shall propose an alternative GI project or gray infrastructure project, or combined green and gray infrastructure project, within 90 days of the date of disapproval. In the event that BSA's alternative proposal is disapproved by EPA and NYSDEC due to the GI project component of the proposal, BSA shall propose an alternative gray infrastructure project within 90 days of the date of disapproval.
- iii. In the event that BSA implements an approved GI project proposal that fails to meet the specified performance criteria set forth in the project proposal and Updated LTCP, BSA shall propose, within 180 days after submittal of the applicable post-construction monitoring report documenting said failure, an additional green or gray infrastructure project designed to achieve the performance criteria with a schedule for completion of this work and implementation of the project that is consistent with this Administrative Order and the date set forth herein in Paragraph 2(a) for completion of construction and full implementation of all remedial and control measures. In the alternative, where BSA has substantially met the performance criteria, BSA may, within sixty (60) days after its knowledge of a project's failure to meet the performance criteria, petition EPA and NYSDEC for a change in the performance criteria. After consideration of any such request by BSA, EPA and NYSDEC's decision will be final. In the event that EPA and NYSDEC disapprove of BSA's request for a change in the performance criteria, BSA shall, within 180 days after EPA and NYSDEC's disapproval, propose additional control measures designed to achieve the performance criteria with a schedule for completion of this work and implementation of the Project that is consistent with this Administrative Order and the date set forth herein in Paragraph 2(a) for completion of construction and full implementation of all remedial and control measures.
- iv. BSA shall submit to EPA an update on its implementation of GI projects as part of the semi-annual reports due on March 1st and September 1st of each year.
- d. If BSA seeks to replace any gray infrastructure projects provided in the Updated LTCP, BSA shall submit to EPA and NYSDEC a detailed GI project proposal outlining each proposed project consistent with the requirements of Paragraph 2(c).
- e. EPA and NYSDEC may approve the Updated LTCP or decline to approve it and provide written comments. Within 120 days of receiving EPA's and NYSDEC's written comments, BSA shall modify the Updated LTCP consistent with EPA's and

NYSDEC's written comments, and resubmit the Updated LTCP to EPA and NYSDEC for final approval.

- f. Upon receipt of EPA's and NYSDEC's final approval of the Updated LTCP (hereinafter "Approved CSO LTCP"), BSA shall implement the measures in the Approved CSO LTCP in accordance with the schedule in the Plan, including certain milestones of which listed in the Appendix, "BSA Approved CSO LTCP Implementation Schedule," and shall complete the implementation of its Approved CSO LTCP by not later than March 18, 2034.

3. Post Construction Monitoring Plan: Within one year of approval of the Updated LTCP, BSA shall submit to EPA and NYSDEC for approval, a work plan for conducting an ongoing study or series of studies ("Post-Construction Monitoring Plan") to help determine: (1) whether the Approved CSO LTCP measures, when completed, meet all performance criteria specified in the Approved CSO LTCP; (2) whether BSA's CSOs comply with the technology-based and water quality-based requirements of the CWA, state law, the CSO Control Policy, all applicable federal and state regulations, and its SPDES Permit, for all CSO-receiving waters; and (3) whether all remaining bypasses are in compliance with the bypass conditions in 40 C.F.R. § 122.41(m), 327 IAC 5- 2-8(11), and demonstrate that there are no feasible alternatives to the remaining bypasses, in accordance with Section II.C.7 of the CSO Control Policy. The Post-Construction Monitoring Plan shall be consistent with the guidance "Combined Sewer Overflows Guidance for Long-Term Control Plan."

- a. The Post-Construction Monitoring Plan shall contain a schedule for performance of the study or series of studies at key points during the course of the implementation of the remedial measures, as well as after completion of the remedial measures, specified in the Approved CSO LTCP. The Post-Construction Monitoring Plan also shall indicate the years (at least biannually) in which data generated during implementation of the Post-Construction Monitoring Plan will be submitted in the reports in Paragraph 4 to EPA and NYSDEC.
- b. EPA and NYSDEC may approve the Post-Construction Monitoring Plan or may decline to approve it and provide written comments. Within ninety (90) days of receiving EPA's and NYSDEC's comments, BSA shall alter the Post-Construction Monitoring Plan consistent with EPA's and NYSDEC's comments, and resubmit the Plan to EPA and NYSDEC for final approval.
- c. Upon final approval of the Post Construction Monitoring Plan, BSA shall implement, in accordance with the schedule therein, the Post-Construction Monitoring Plan. If the results of the Post-Construction Monitoring Plan indicate areas of non-compliance, BSA shall, within 120 days, (unless a different period is specified) of being requested in writing to do so, submit to EPA and NYSDEC a Supplemental Compliance Plan which includes the actions that BSA will take to achieve compliance and a schedule for taking such actions. Upon approval by the EPA and NYSDEC, BSA shall implement the Supplemental Compliance Plan, in accordance with the schedule specified in the approved Plan.
- d. Within one hundred twenty (120) days after completion and implementation of the Post-Construction Monitoring Plan, BSA shall submit a Final Post-Construction-Monitoring Report to EPA and NYSDEC, for review, comment and approval, that:
 - i. demonstrates that BSA performed the Post-Construction Monitoring Plan in accordance with the approved Plan and schedule set forth in the approved Post-Construction Monitoring Plan; and

- ii. summarizes the data collected during Post-Construction Monitoring and analyzes whether the completed control measures have met and/or are meeting the performance criteria specified in the Approved CSO LTCP; whether BSA's CSOs comply with the requirements of the CWA, state law, the CSO Control Policy, all applicable federal and state regulations, and BSA's SPDES Permits; and whether all remaining bypasses are in compliance with the bypass conditions in 40 C.F.R. § 122.41(m), 327 IAC 5- 2-8(11), and demonstrate that there are no feasible alternatives to the remaining bypasses, in accordance with Section II.C.7 of the CSO Control Policy.
- e. EPA and NYSDEC may approve the Final Post-Construction Monitoring Report or may decline to approve it and provide written comments. Within sixty (60) days of receiving EPA's and NYSDEC's comments, BSA shall alter the Final Post-Construction Monitoring Report consistent with EPA's and NYSDEC's comments, and resubmit the Report to EPA and NYSDEC for final approval. Approval of the Final Post-Construction Monitoring Report only constitutes EPA's and NYSDEC's approval that the report contains the information required by this Administrative Order; it does not mean that EPA and NYSDEC believe BSA has complied with any other requirement of this Administrative Order or federal or state law.

4. Reporting Requirements

- a. Semi-Annual Status Reports. Upon the effective date of this Administrative Order, until EPA and NYSDEC's approval of the Final Post-Construction-Monitoring Report, BSA shall submit written Semi-Annual Status Reports to EPA and NYSDEC. These reports shall be submitted by no later than March 1st of each year (for the "reporting period" from July 1 through December 31 of the previous calendar year) and September 1st of each year (for the "reporting period" from January 1 through June 30 of the current calendar year). The Semi-Annual Status Reports may be provided either as paper documents or in electronic format, provided that the electronic format is compatible with EPA and NYSDEC software and is accompanied by a written certification on paper in accordance with "General Provisions" Paragraph 1. The written certification must be sent via certified or overnight mail. The frequency of reports, and the reporting period, may be amended upon written agreement from EPA and NYSDEC. In each written Semi-Annual Status Report, BSA shall provide, at a minimum, the following:
 - i. a statement setting forth (1) the deadlines and other terms that BSA has been required to meet since the date of the last statement; (2) whether and to what extent BSA has met those requirements; and (3) the reasons for any noncompliance (notification to EPA and NYSDEC of any anticipated delay shall not, by itself, excuse the delay);
 - ii. (1) a general description of the work completed within the prior reporting period; (2) to the extent known, a statement as to whether the work completed in that period meets applicable design criteria; (3) a projection of work to be performed during the next six-month period; (4) notification of any anticipated delays for the upcoming six month period of time; and (5) any changes in key personnel.
 - iii. If any public meetings were held, the report should include a copy of any advertisements placed for the meeting, any materials or handouts, formal meeting notes, and a summary of the meeting.

- iv. BSA shall also submit, with each written status report, copies (to EPA only) of all monthly monitoring reports or other reports pertaining to CSOs and bypasses that BSA submitted to NYSDEC during the reporting period.
- b. Semi-Annual Status Meetings. Representatives of EPA, NYSDEC and BSA shall conduct semi-annual meetings to discuss BSA's compliance status with the provisions of this Order. These meetings shall be scheduled during the months of March or April to discuss the previous reporting period, and September or October to discuss the previous reporting period. The meetings can be conducted telephonically if agreed in writing (including electronic correspondence) by all parties in advance. The frequency of such compliance meetings may be reduced upon written agreement (including electronic correspondence) from EPA and NYSDEC.
- c. Annual Post Construction Monitoring Report. Upon the effective date of this Administrative Order, until EPA and NYSDEC's approval of the Final Post-Construction-Monitoring Report, BSA shall submit annually with its September 1st Semi-Annual Reports, an Annual Post Construction Monitoring Report containing information generated in accordance with the Post-Construction Monitoring Plan. The Annual Post Construction Monitoring report may be provided either as paper documents or in electronic format, provided that the electronic format is compatible with EPA and NYSDEC software and is accompanied by a written certification on paper in accordance with "General Provisions" Paragraph 1. The written certification must be sent via certified or overnight mail. The frequency of reports, and the reporting period, may be amended upon written agreement from EPA and NYSDEC.
- d. Permits or Approvals. When it is necessary for BSA to obtain a federal, state, or local permit or approval or perform SEQR review, BSA shall submit timely and complete applications, or timely perform the SEQR review, and take all other actions necessary to obtain all such permits or approvals or to ensure compliance with SEQR.

GENERAL PROVISIONS

1. Any documents to be submitted by BSA pursuant to this Administrative Order shall be signed by an official of BSA or an authorized representative of BSA (see 40 C.F.R. § 122.2) and include the following certification:

"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

2. All notifications, reports, submissions and communications required by this Order shall be sent by certified mail or its equivalent to the following addresses:

Doughlas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866

Joseph DiMura, P.E.
Director, Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3506

Regional Water Engineer
New York State Department of Environmental Conservation
Region 9
270 Michigan Avenue
Buffalo, New York 14203-2915

3. The Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer, regarding the Amendments to Administrative Order CWA-02-2012-3024, with the following designated Agency Representative:

Doughlas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866
(212) 637-4244

4. Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
6. Notice is hereby given that should EPA commence an action in a United States District Court for a violation of any Ordered Provision of this Order, Respondent may be subject to (1) civil penalties up to \$37,500 per day for each day of violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); and/or (2) injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), as imposed by the Court.

7. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
8. Provisions of Administrative Order CWA-02-2012-3024, incorporated herein, continue to be effective as of March 9, 2012. The Amendments to Administrative Order CWA-02-2012-3024 contained in this Order CWA-02-2014-3033 shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: APRIL 11, 2014

Signed: _____

Dore LaPosta, Director

Division of Enforcement and Compliance Assistance

APPENDIX

BSA Approved CSO LTCP Implementation Schedule

Project Name	Project Milestones/Deadlines
Phase I Projects (see Table 11-11)	
Bird/Lang RTC Projects	Construction Start and Completion Dates: 3/17/2014 – 9/2/2014 Operations/Optimization (RTC): 9/3/2014 – 9/3/15
Foundation Projects (see Table 11-11)	
Foundation 1 - Smith Street Storage	Engineering Start: 3/18/2014 Engineering Completion: 3/18/2015 Notice to Proceed: 3/18/2015 Substantial Completion: 3/18/2017
Foundation 2 - SPP Optimization (20 projects)	Engineering Start: 3/1/14 Engineering Completion: 3/18/2015 ⁽¹⁾ Notice to Proceed: 3/1/14 Substantial Completion: 3/18/2017 ⁽¹⁾
Foundation 3 - Remaining RTC (14 sites)	Engineering Start: 3/18/2016 Engineering Completion: 3/18/2023 ⁽¹⁾ Notice to Proceed: 3/18/2017 Substantial Completion: 3/18/2024 ⁽¹⁾
Foundation 4 - Hamburg Drain Optimizations	Engineering Start: 3/18/2015 Engineering Completion: 3/18/2017 ⁽¹⁾ Notice to Proceed: 3/18/2016 Substantial Completion: 3/18/2018 ⁽¹⁾
Foundation 4 – Hamburg Drain Storage	Engineering Start: 3/18/2028 Engineering Completion: 3/18/2030 Notice to Proceed: 3/18/2030 Substantial Completion: 3/18/2032
Green Projects (see GI Master Plan)	
Green Pilot Projects – 267-acres of GI control	Engineering Start: 3/1/14 Engineering Completion: 3/18/2016 ⁽²⁾ Construction Completion Date: 3/18/2018 ⁽²⁾ PCM Start and Completion Dates: 3/18/2016 – 3/18/2019 ⁽²⁾ Construction of controls for at least 134 acres will have started by 9/18/2017
Green 2 – 410-acres of GI control	Engineering Start: 3/18/2019 Engineering Completion: 3/18/2023 ⁽²⁾ Construction Completion Date: 3/18/2024 ⁽²⁾ Construction of controls for at least 205 acres will have started by 3/18/2022 ⁽²⁾

Green 3 – 375-acres of GI control	Engineering Start: 3/18/2023 Engineering Completion: 3/18/2028 ⁽²⁾ Construction Completion Date:3/18/2029 ⁽²⁾ Construction of controls for at least 188 acres will have started by 9/18/2026 ⁽²⁾
Green 4 – 263-acres of GI control	Engineering Start: 3/18/2028 Engineering Completion: 3/18/2033 ⁽²⁾ Construction Completion Date:3/18/2034 ⁽²⁾ Construction of controls for at least 132 acres will have started by 9/18/2031 ⁽²⁾
<u>WWTP</u>	
WWTP Improvements Project – Alternative C2 (two consecutive projects)	Engineering Start: 3/18/2015 Engineering Completion: 3/18/2019 ⁽¹⁾ Notice to Proceed: 3/18/2017 Substantial Completion 3/18/2022 ⁽¹⁾
<u>Gray Projects (see Section 12.3)</u>	
CSOs 014/15 – In-line storage and optimization	Construction Start: 3/18/14 Substantial Completion: 3/18/15
CSO 013 – Satellite storage, conveyance, FM & PS	Engineering Start: 3/18/2019 Engineering Completion: 3/18/2020 Notice to Proceed: : 3/18/2020 Substantial Completion: 3/18/2022
North Relief – Interceptor	Engineering Start: 3/18/2019 Engineering Completion: 3/18/2022 Notice to Proceed: 3/18/2022 Substantial Completion: 3/18/2026
CSOs 010, 008/010, 061, 004 – Underflow capacity upsizing	Engineering Start: 3/18/2021 Engineering Completion: 3/18/2023 Notice to Proceed: 3/18/2023 Substantial Completion: 3/18/2024
SPP 337 (CSO 053) – Satellite storage, conveyance, FM & PS	Engineering Start: 3/18/2023 Engineering Completion: 3/18/2025 Notice to Proceed: 3/18/2025 Substantial Completion: 3/18/2027
SPP 336 a+b (CSO 053) – Satellite storage, conveyance, FM & PS	Engineering Start: 3/18/2024 Engineering Completion: 3/18/2026 Notice to Proceed: 3/18/2026 Substantial Completion: 3/18/2029

Jefferson & Florida (SPP 170B – CSO 053) – Satellite storage, conveyance and FM	Engineering Start: 3/18/2025 Engineering Completion: 3/18/2027 Notice to Proceed: 3/18/2027 Substantial Completion: 3/18/2030
CSO 055 – Satellite storage, conveyance, FM & PS	Engineering Start: 3/18/2027 Engineering Completion: 3/18/2030 Notice to Proceed: 3/18/2030 Substantial Completion: 3/18/2034
CSOs 028/044/047 - Satellite storage, conveyance, FM & PS (storage at Tops from CSO 47 west)	Engineering Start: 3/18/2028 Engineering Completion: 3/18/2031 Notice to Proceed: 3/18/2031 Substantial Completion: 3/18/2034
CSO 052 – Satellite storage, conveyance, FM & PS	Engineering Start: 3/18/2030 Engineering Completion: 3/18/2032 Notice to Proceed: 3/18/2032 Substantial Completion: 3/18/2034
CSO 064 – Satellite storage, conveyance, FM & PS	Engineering Start: 3/18/2030 Engineering Completion: 3/18/2032 Notice to Proceed: 3/18/2032 Substantial Completion: 3/18/2034
Post Construction Monitoring	
Submit PCM Plan	3/18/2015
Implement PCM	Per approved PCM Plan

NOTES:

References specified in the Implementation Schedule above refer to the Approved BSA CSO LTCP, including the Green Infrastructure Master Plan, approved by EPA and NYSDEC on March 18, 2014.

Engineering timeframes (from start to completion) include planning, design, permitting/SEQRA/Public Notice, regulatory review and approval, land/easement acquisition, funding, and bidding/award.

Substantial Completion is defined as the time at which the Project has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Project can be utilized for the purposes for which it is intended.

(1) Project consists of multiple smaller projects that will overlap in engineering and construction. Specific engineering completion and construction dates for each project site will be determined and submitted to the Agencies as they are developed. In any case, all work associated with these blocks of projects will be completed within the overall timeframe shown.

(2) GI projects will consist of multiple smaller projects including building demolitions that will overlap in engineering and construction during a given GI phase. For each phase, the BSA will achieve the start of construction for at least 50 percent of the required acreage by the mid-point of each phase.

