

Intro. Res. No. 1770-2011
Introduced by Presiding Officer, on request of the County Executive

Laid on Table 8/16/2011

**RESOLUTION NO. 769-2011, AUTHORIZING EXECUTION
OF AN ORDER ON CONSENT CONCERNING THE SUFFOLK
COUNTY SEWER DISTRICT NO. 3, SOUTHWEST, BERGEN
POINT WASTE WATER TREATMENT PLANT**

WHEREAS, it is alleged by the New York State Department of Environmental Conservation (NYSDEC), that violations of the Environmental Conservation Law and associated regulations concerning sanitary sewage overflows (SSOs) and discharge of settleable solids have occurred at the Bergen Point Waste Water Treatment Plant and in the Bergen Point Sewer District's Collection System; and

WHEREAS, NYSDEC and Suffolk County have negotiated a proposed Order on Consent (Matter of Alleged Violations of Article 17 of the Environmental Conservation Law ("ECL") of the State of New York and Part 750 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") of the State of New York by Suffolk County Department of Public Works for its facility at Suffolk County Sewer District No. 3, Southwest, Bergen Point (Index No. R-1-20110315-31) ("Consent Order"); and

WHEREAS, the violations are based upon reports submitted in compliance with Suffolk County's State Pollutant Discharge Elimination System (SPEDES) Permit # NY 0104809; and

WHEREAS, upon Suffolk County's compliance with the Consent Order, NYSDEC shall issue a letter indicating that the alleged violations have been resolved and that NYSDEC will take no further action based upon the alleged violations; and

WHEREAS, the Compliance Schedule for the Consent Order requires the Suffolk County Department of Public Works to undertake the Southwest Sewer District No. 3 Collection System Treatment Process Improvement Project, which has already received legislative approval; and

WHEREAS, the Compliance Schedule for the Consent Order also requires the Suffolk County Department of Public Works to undertake an Infiltration/Inflow Reduction Project, the initial steps of which have already been approved and which may require legislative approval of future steps; and

WHEREAS, it is anticipated that such projects will minimize further occurrences of SSO's; and

WHEREAS, under the Consent Order, Twenty-Thousand Dollars (\$20,000.00) of the proposed penalties shall be suspended based upon the County's adherence to the terms and conditions of the Consent Order and the Compliance Schedule, and the penalty payable would be reduced to Forty-Seven Thousand Dollars (\$47,000.00) to be paid out of the Operating Budget (203-8113-4575); and

WHEREAS, the alleged violations, if proven, could have resulted in substantially higher penalties, notwithstanding the fact that the Suffolk County Department of Public Works

responded immediately to such problems and that the alleged violations did not create any safety threat; and

WHEREAS, entry into the Consent Order would be in the best interest of the County of Suffolk; now, therefore be it

1st **RESOLVED**, that the Administrative Head of Suffolk County Sewer District No. 3, Southwest, is hereby authorized empowered and directed to execute the Consent Order, substantially in the form submitted herewith as Exhibit A, and to take all actions necessary to implement the Consent Order, subject to any necessary approvals by the County Legislature, and be it further

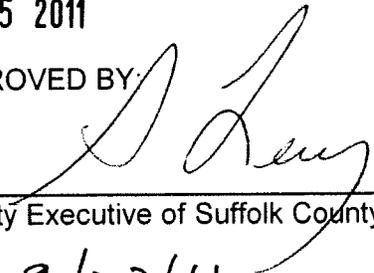
2nd **RESOLVED**, that the execution and delivery on behalf of and in the name of the County by the Administrative Head of Suffolk County Sewer District No. 3, Southwest, of the Consent Order presented to the members of the Legislature at this meeting in this Resolution is hereby authorized and directed, with such changes therein as the NYSDEC may require, the Administrative Head of Suffolk County Sewer District No. 3, Southwest, may accept, and the County Attorney may approve; and be it further

3rd **RESOLVED**, that the execution and delivery of such Consent Order shall be conclusive evidence of approval of any such changes and of the authorization and direction thereof by this Legislature; and be it further

4th **RESOLVED**, that this Legislature, being the State Environmental Quality Review Act (SEQRA) Lead Agency, hereby finds and determines that the adoption of this law is a Type II action pursuant to Title 6 NYCRR Section 617.5(c) (20) and (27) since it constitutes a local legislative decision in connection with routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment. As a Type II action, the Legislature has no further responsibilities under SEQRA.

DATED: **SEP 15 2011**

APPROVED BY:



County Executive of Suffolk County

Date: 9/23/11

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of
Article 17 of the Environmental
Conservation Law ("ECL") of the State
of New York and Part 750 of Title 6 of the
Official Compilation of Codes, Rules and
Regulations ("6 NYCRR") of the State of
New York by

Order on Consent

Index No. R1-20110315-31

SUFFOLK COUNTY DEPARTMENT OF PUBLIC WORKS
for its facility at SUFFOLK COUNTY SEWER DISTRICT NO. 3, SOUTHWEST,
BERGEN POINT

Respondent

1. The New York State Department of Environmental Conservation ("DEC" or the "Department") is responsible for the administration and enforcement of laws and regulations pertaining to the regulation of water pollution control in the State of New York, including Article 17 of Environmental Conservation Law of the State of New York ("ECL") and Part 750 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"); and
2. Respondent, SUFFOLK COUNTY DEPARTMENT OF PUBLIC WORKS, has offices at 335 Yaphank Avenue, Yaphank, NY 11980 and is a county agency. Suffolk County Sewer District No. 3-Southwest is an administrative unit of the County of Suffolk and owns and operates BERGEN POINT, which is located at 600 Bergen Avenue, West Babylon, County of Suffolk, New York (hereinafter referred to as "the Facility"); and
3. ECL § 17-0105 (1) states that "'person' or 'persons' means any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever;" and
4. Respondent SUFFOLK COUNTY SEWER DISTRICT NO. 3, SOUTHWEST, BERGEN POINT is a "person" as defined in ECL §17-0105 (1); and
5. Respondent has at all times pertinent to the alleged violations cited herein, owned and controlled the Facility; and
6. Respondent was issued State Pollutant Discharge Elimination System Permit # NY 0104809 (hereinafter "SPDES Permit 0104809") for the discharge of pollutants from the Facility. This SPDES Permit was renewed by the Department effective January 1, 2010 to December 31, 2015; and

7. Pursuant to ECL §17-0511 and 6 NYCRR Part 750, the use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into water of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the Department; and
8. Department Staff has documented that on eight occurrences on March 30, 2010 and March 31, 2010, Respondent has violated the above statute and regulation in that Respondent caused and or permitted to be caused sanitary sewage overflows in Bergen Point Sewer District's Collection System; and
9. Pursuant to ECL §17-0803 and 6 NYCRR Part 750, it is unlawful to discharge pollutants into the waters of the state from any outlet or point source without a SPDES permit issued pursuant hereto or in a manner other than as allowed under such a permit; and
10. Department Staff has documented that on three occurrences Respondent has violated the above statute and regulation in that Respondent allowed the discharge of settleable solids in violation of their allowable limit authorized by their Permit. The date of the aforementioned Permit violations are October 31, 2007, September 30, 2009 and October 31, 2010; and
11. ECL Section 71-1929 provides that any person who violates any provision of titles 1 through 11 of ECL Article 17 or any rule, regulation or order issued thereunder, shall be liable for a penalty not to exceed thirty-seven thousand, five hundred (\$37,500) dollars per day for each violation.
12. Respondent affirmatively waives its right to a hearing on this matter as provided by law and consents to the issuing and entering of this Order and agrees to be bound by the provisions, terms and conditions contained herein.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

- I. Compliance. Respondent shall immediately comply with the terms and conditions of the Compliance Schedule attached hereto.
- II. Civil Penalty. That with respect to the aforementioned violations, there is hereby imposed upon the Respondent, a penalty in the sum of SIXTY SEVEN THOUSAND (\$67,000) DOLLARS of which sum FORTY SEVEN THOUSAND (\$47,000) DOLLARS shall be payable within sixty (60) days of the effective date of this Order.¹ The penalty shall be made payable to "N.Y. S. Department of Environmental Conservation." The remaining sum of TWENTY THOUSAND (\$20,000) DOLLARS shall be suspended provided that Respondent adhere to the terms and conditions of this Order and the attached Compliance Schedule.
- III. Stipulated Penalties. The following stipulated penalties shall apply:

¹ The Department acknowledges that Suffolk County Comptroller requires a fully executed Order for the issuance of the payable penalty.

- a. If the Respondent fails to meet any of the three submission requirements as detailed in the Schedule of Compliance attached to this Order, a stipulated penalty in the amount of \$10,000 per violation, per day, shall apply.
- b. Any penalty owed by the Respondent pursuant to subparagraph (a) above shall be due and payable within 120 days of Respondent's receipt of a notice of noncompliance which shall be issued by DEC in writing and which shall specify the amount of the penalty then due. Interest shall accrue on any penalty not paid when due, at a judgment rate not to exceed 9% per annum, non-compound, or such other judgment interest rate as General Municipal Finance Law § 3-a or any successor law shall establish.
- c. In the event that Respondent fails to pay any penalty due pursuant to this Paragraph IV by the due date, this Order together with the notice of noncompliance specifying the amount due may be filed and enforced by the DEC as a civil judgment for the total penalty amount set forth in the notice of noncompliance without the need for further proceedings.

IV. No Further Action Upon Respondent's compliance with the terms and conditions of this Order, including the attached Compliance Schedule, the Department shall issue a letter indicating that the violations set forth herein have been resolved and subject to the limitation set forth in the paragraph on Reservation of Rights, the Department will take no further action against the Respondent for the violations resolved by this Order on Consent.

V. Reservation of Rights. Subject to the foregoing, the Department reserves its rights to exercise authorities under law, including the summary abatement power of the Commissioner. The Department reserves its rights to protect human health and the environment, to require that the Respondent undertake any additional measures required to protect human health or the environment, and to otherwise require compliance with the law.

VI. Modification. In those instances in which Respondent desires that any of the provisions, terms or conditions of this Order be changed, it shall make written application, setting forth the grounds for the relief sought, to the Commissioner, c/o Regional Attorney, 50 Circle Drive, Stony Brook, NY 11790. No change or modification to this Order shall become effective except as specifically set forth in writing and approved by the Commissioner or a duly authorized representative.

VII. Indemnification. Respondent shall indemnify and hold the Department, the State of New York, their representatives, employees and agents, harmless for all claims, actions, damages and costs resulting from the intentional or negligent acts or omissions, or other acts or omissions, as permissible under the Public Officers Law of Respondent, its officers, employees, servants, agents, successors or assigns, in the fulfillment or attempted fulfillment of the provisions of this Order.

VIII. Future Compliance. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to Respondent's facilities

during reasonable hours; in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

IX. Binding Effect. The provisions, terms, and conditions of this Order, including Appendix A, shall be deemed to bind Respondent and Respondent's officers, directors, agents, employees, successors and assigns and all persons, firms and corporations acting under or for them, including, but not limited to those who may carry on any or all of the operations now being conducted by Respondent, whether at the present location or at any other in this State.

X. Collection Costs / Fees. Respondent's failure to pay any penalty amounts due under the terms of this Order may result in a 22% surcharge in recovery costs and a potential tax refund offset by the Department of Taxation and Finance.

XI. Effective Date. The effective date of this Order shall be the date upon which it is signed by the Commissioner or the Commissioner's Designee on behalf of the Department.

XII. Unforeseen Events. Respondent shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if Respondent cannot comply with any requirements of the provisions hereof because of an Act of God, war, riot, or other catastrophe as to which negligence or willful misconduct on the part of Respondent was not foreseen or a proximate cause, provided, however, that the Respondent shall immediately notify the Department in writing, when it obtains knowledge of any such condition and shall request an appropriate extension or modification of the provisions hereof; Respondent will adopt all reasonable measures to prevent or minimize any delay.

XIII. Entire Agreement. This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified without the written consent of the parties hereto or their lawfully designated successors.

Stony Brook, New York

Dated: _____

JOSEPH J. MARTENS
Commissioner of Environmental Conservation

By: _____
PETER A. SCULLY
Regional Director

CONSENT BY COUNTY AGENCY

Respondent, **SUFFOLK COUNTY DEPT. OF PUBLIC WORKS** acknowledges the authority and jurisdiction of the Commissioner of the Department of Environmental Conservation of the State of New York to issue the foregoing Order, waives public hearing or other proceedings in the matter, accepts the terms and conditions set forth in the Order and consents to the issuance thereof and agrees to be bound by the provisions, terms and conditions contained therein.

SUFFOLK COUNTY DEPT. OF PUBLIC WORKS
Respondent

By: _____

Name: _____

Title: _____

an individual duly authorized by the respondent agency to sign on behalf of the agency and whom may bind respondent agency to the terms and conditions contained herein.

Date: _____

COUNTY AGENCY ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the _____ day of _____ in the year 2011, before me personally came _____, to me known, who, being duly sworn did depose and say that they resides at _____, that they are the _____ of **SUFFOLK COUNTY DEPT. OF PUBLIC WORKS** the agency described herein and which executed the above instrument; and that he or she signed his or her name thereto with full authority so to do.

Sworn to before me this
____ day of _____, 2011

Notary Public

COMPLIANCE SCHEDULE
FOR
SUFFOLK COUNTY DEPT. OF PUBLIC WORKS
for its facility at
SUFFOLK COUNTY SEWER DISTRICT NO. 3
located at
BERGAN POINT, SOUTHWEST
SPDES #NY0104809

SUBMISSION RERQUIREMENTS:

- On or before 8/31/2011: Respondent shall develop and submit an SSO Abatement and Elimination Plan.
- On or before 9/30/2011: Respondent shall develop and submit an approvable Asset Management Plan for the collection system infrastructure including All the pumping stations. The Asset Management Plan shall include, at a minimum, the following items:
- a) An inventory of assets, including both equipment and personnel;
 - b) An assessment of criticality and conditions; and useful life span;
 - c) Ranking and Prioritizing of equipment;
 - d) Assets value, replacement costs, replacement schedule;
 - e) Minimum life cycle cost and long term funding plan
- On 15th day of July and January after issuance of Consent Order: Respondent shall submit semi-annual progress reports, i.e. January and July of each year beginning in 2012 through January 2015, detailing work for reducing Infiltration/Inflow, as proposed by the Respondent to the Department, in Respondent's letter dated August 30, 2010, submitted in response to the Notice of Violation, dated July26, 2010.

All submittals to the Department required under this Order shall be made by Respondent as follows:

- 1) One copy to: Regional Attorney
Legal Affairs, Region One
New York State Department of Environmental Conservation,
50 Circle Road, SUNY at Stony Brook
Stony Brook, New York 11790-3409; and
- 2) One copy to: Regional Water Manager

**Division of Water, Region One
NYS Department of Environmental Conservation
50 Circle Road, SUNY at Stony Brook
Stony Brook, New York 11790-3409; and**

- 3) One copy to: Chief of Bureau of Compliance
Division of Water
NYS Department of Environmental Conservation
625 Broadway, Albany, New York 12233-3502**

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on September 15, 2011 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature

Intro. Res. 1770

Res. No. 769

September 15, 2011

Motion:

Romaine, Schneiderman, Browning, Muratore, Anker
 Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:

Romaine, Schneiderman, Browning, Muratore, Anker
 Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:

Romaine, Schneiderman, Browning, Muratore, Anker
 Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					
2	Jay H. SCHNEIDERMAN					
3	Kate M. BROWNING					
4	Thomas MURATORE					
6	Sarah S. ANKER					
7	Jack EDDINGTON					
9	Ricardo MONTANO					
10	Thomas CILMI					
11	Thomas F. BARRAGA					
12	John M. KENNEDY, JR.					
13	Lynne C. NOWICK					
14	Wayne R. HORSLEY					
15	DuWayne GREGORY					
16	Steven H. STERN					
17	Lou D'AMARO					
18	Jon COOPER					
5	Vivian VILORIA-FISHER, D.P.O.					
8	William J. LINDSAY, P.O.					
	Totals	<u>18</u>				

MOTION
<input checked="" type="checkbox"/> Approve
___ Table: _____
___ Send To Committee
___ Table Subject To Call
___ Lay On The Table
___ Discharge
___ Take Out of Order
___ Reconsider
___ Waive Rule ___
___ Override Veto
___ Close
___ Recess
APPROVED <input checked="" type="checkbox"/> FAILED ___
No Motion ___ No Second ___

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
___ NOT ADOPTED

Tim Laube

Roll Call ___ Voice Vote