

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, STATE  
OF NEW YORK, and BASIL SEGGOS, as  
COMMISSIONER OF THE NEW YORK  
STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION,

Plaintiffs,

v.

VILLAGE OF NORTHPORT,

Defendant.

CIVIL ACTION  
NO. 2:20-CV-890

**CONSENT JUDGMENT**

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## I. BACKGROUND

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), the State of New York, and Basil Seggos, as Commissioner of the New York State Department of Environmental Conservation, have filed a complaint (“Complaint”) concurrently with this Consent Judgment, against Defendant, the Village of Northport, located in the State of New York (“Northport”) alleging, *inter alia*, that Northport violated Sections 301(a) and 402 of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1301(a) and 1342 and Article 17, Titles 7 and 8 of the New York State Environmental Conservation Law (“ECL”), by failing to comply with the New York State Department of Environmental Conservation (“NYSDEC”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (“MS4”), Permit Identification Number NYR20A303, (“MS4 Permit”), applicable to Northport’s MS4 program;

WHEREAS, the Village of Northport is an incorporated village of the Town of Huntington in Suffolk County, New York, and is organized under the laws of New York State, Northport is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4) and ECL § 1-0303(1), and a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and ECL §§ 1-0303(18) and 17-0105(1);

WHEREAS, Northport, located on the North Shore of Long Island, owns and operates Northport’s MS4 system which discharges to Northport Harbor, a navigable water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7);

WHEREAS, under the Act, Northport is required to operate its MS4 system pursuant to an MS4 program that is designed to prevent the discharge of pollutants to waters of the United States;

WHEREAS, Northport recognizes that it is responsible for the care, maintenance and monitoring of the Outfalls, as defined herein, and represents that to the best of its knowledge, it does not own any other active stormwater outfalls;

WHEREAS, the Complaint against Northport alleges that Northport violated the Act by failing to properly implement its MS4 program;

WHEREAS, Northport admits that it did not fully develop and implement a Storm Water Management Program, and was required to do so by January 8, 2008, as required by the MS4 Permit;

WHEREAS, Northport has cooperated with the EPA's investigation and in making remedial efforts to cure its deficiencies;

WHEREAS, Northport has made improvements in its State Pollutant Discharge Elimination System ("SPDES") program, including upgrades to its sewer treatment plant;

WHEREAS, the Parties recognize, and the Court by entering this Consent Judgment finds, that the Consent Judgment has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Judgment is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and over the Parties. This Court has supplemental jurisdiction over New York's and NYSDEC's claims pursuant to 28 U.S.C. § 1367.

2. Venue lies in this District pursuant to 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because Northport is located in this judicial district and the events giving rise to the claims in the Complaint arose in this judicial district.

3. For purposes of this Consent Judgment, or any action or proceeding to enforce this Consent Judgment, Northport consents to the Court's jurisdiction over this Consent Judgment and any such action over Northport, and consents to venue in this judicial district.

4. For purposes of this Consent Judgment, Northport agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d) and pursuant to Sections 17-0803 and 17-0808 of the ECL.

## **III. APPLICABILITY**

5. The obligations of this Consent Judgment apply to and are binding upon the United States and the State of New York, and upon Northport and any successors, assigns, or other entities or persons otherwise bound by law.

6. Northport shall provide a copy of this Consent Judgment as well as a summary of applicable requirements of this Consent Judgment to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Judgment, as well as to any contractor retained to perform work required under this Consent Judgment.

Northport shall condition any such contract upon the performance of the work in conformity with the terms of this Consent Judgment.

7. In any action to enforce this Consent Judgment, Northport 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 the provisions of this Consent Judgment.

#### IV. DEFINITIONS

8. Terms used in this Consent Judgment that are defined in the Act, 33 U.S.C. §§ 1251 *et seq.*, or the regulations promulgated thereunder shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Consent Judgment. Whenever the terms set forth below are used in this Consent Judgment, the following definitions shall apply:

- a. “**Clean Water Act**”, “**CWA**” or “**Act**” shall mean the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*;
- b. “**Complaint**” shall mean the complaint filed by the United States and the State of New York in this action;
- c. “**Consent Judgment**” shall mean this decree and all appendices attached hereto and incorporated into this Consent Judgment (listed in Section XXII), and any modifications made hereto pursuant to Section XVII (Modification);
- d. Unless otherwise indicated, the term “**Day**” or “**Days**” as used herein shall mean a calendar day or days. References to “**business days**” shall mean days of the week other than Saturdays, Sundays, holidays, and days containing half-holidays. In computing any period of time under this Consent Judgment,

if the last day would fall on a Saturday, Sunday, or federal holiday, the period shall continue until the next business day;

- e. **“Dry Weather Inspections”** shall mean, for purposes of this Consent Judgment, a visual observation and recording, by photographs, of the Outfalls to determine whether there is an indication of discharges not entirely composed of stormwater. Dry Weather Inspections shall be performed at a time when there has been no rainfall or snowmelt in the Village of Northport, New York, for the preceding 48 hours according to the National Weather Service;
- f. **“Dry Weather Sampling”** shall mean the taking of samples of any discharged liquids from the Outfalls at a time when there has been no rainfall or snowmelt in the Village of Northport, New York, for the preceding 48 hours according to the National Weather Service;
- g. **“Effective Date”** shall mean the date described in Section XV (Effective Date);
- h. **“EPA”** shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- i. **“Minimum Control Measures”** shall mean 1. Public Education and Outreach, 2. Public Involvement and Participation, 3. Illicit Discharge Detection and Elimination, 4. Construction Site Stormwater Runoff Control, 5. Post-Construction Stormwater Management, and 6. Pollution Prevention/ Good Housekeeping for Municipal Operations, and the various components required under each, as described in the MS4 Permit;

- j. **“MS4 Permit”** shall mean the most current version of the NYSDEC SPDES General Permit for Stormwater Discharges from MS4s, as defined by the present general permit number, GP-0-15-003, or, if applicable, the general permit number designated upon the renewal of the present permit;
- k. **“New York”** shall mean the State of New York;
- l. **“Northport”** shall mean the Village of Northport;
- m. **“NYSDEC”** shall mean the New York State Department of Environmental Conservation, the state executive agency charged with the administration of, *inter alia*, the New York State National Pollutant Discharge Elimination System (“NPDES”) program.
- n. **“Outfalls”** shall mean the nineteen active stormwater outfalls owned by the Village of Northport and identified on the attached Appendix A;
- o. **“Paragraph”** shall mean a portion of this Consent Judgment identified by an Arabic numeral;
- p. **“Parties”** shall mean the United States, New York, and Northport;
- q. **“Plan of Study”** shall mean the Village’s illicit discharge detection and elimination (“IDDE”) trackdown procedure dated February 27, 2013, which was approved by EPA by letter dated April 30, 2013 (*See* Appendix B);
- r. **“Section”** shall mean a portion of the Consent Judgment identified by a roman numeral;
- s. **“SPDES”** shall mean the State Pollutant Discharge Elimination System, as established by 33 U.S.C. § 1342 and ECL Article 17, Title 8;

t. **“United States”** shall mean the United States of America, acting on behalf of the EPA;

u. **“Wet Weather Sampling”** shall mean the taking of samples of any discharged liquids from the Outfalls at a time when there has been rainfall or snowmelt in the Village of Northport, New York that produces measurable runoff to the MS4.

## V. COMPLIANCE REQUIREMENTS

9. Northport shall fully comply with the terms and conditions of the most current version of the MS4 Permit, including more frequent outfall inspections and sampling, should the requirements in the Permit renewal be more stringent than the inspection and sampling program set forth in Paragraph 10, below. Reports due under this Paragraph shall be submitted pursuant to the schedule set forth in Paragraph 20, below.

### 10. Outfall Inspections and Sampling.

a. Dry Weather Inspections. Northport shall complete a first set of Dry Weather Inspections at the Outfalls, and document the results in a report, no later than (i) 30 Days after the Effective Date, or (ii) if there is persistent rainfall or snowmelt within that 30 Day period (the “Period”), then within three Days after the first 48 hours after the Period that there has been no rainfall or snowmelt in the Village of Northport, New York according to the National Weather Service. Thereafter, Northport shall perform a second set of Dry Weather Inspections of the Outfalls within one year after completing the first set of Dry Weather Inspections, and document the results of those Dry Weather Inspections in a report.

- b. Dry Weather Sampling. If, during a Dry Weather Inspection of the Outfalls as required by Paragraph 10(a) above, Northport detects a liquid outflow, it shall perform Dry Weather Sampling as soon as practicable, but no later than 48 hours after identifying such dry weather flow. Northport shall document the results of any Dry Weather Sampling in a report.
- c. Wet Weather Sampling. No later than 30 Days after the Effective Date, or if there is no rainfall within that 30 Day period, within one Day of the first rainfall after the Effective Date, Northport shall perform a first set of Wet Weather Sampling of the Outfalls and document the results in a report. Thereafter, based on the first set of results of Wet Weather Sampling, Northport shall perform another set of Wet Weather Sampling at outfalls that require subsequent investigation(s), in accordance with the Plan of Study and/or the trackdown procedures set forth in Paragraph 11, below, and document the results in a report.

11. Trackdown. Upon receipt of any Dry Weather Sampling or Wet Weather Sampling results with a median most probable number (“MPN”) value in any series of representative samples in excess of 70 MPN per 100 milliliters for Total Coliforms, Northport shall implement trackdown procedures in accordance with paragraphs 4 through 8 of the Plan of Study (*See Appendix B*) (and associated subparagraphs) for each applicable outfall (“Priority Outfall”).

- a. Northport shall commence implementation of trackdown procedures as soon as practicable, but no later than 15 Days after the Effective Date, or 15 Days after receipt of Sampling results, whichever is later.

- b. Northport shall maintain dated, detailed documentation of all activities performed under the Plan of Study for each Priority Outfall.
- c. For each Priority Outfall, upon complete implementation of the trackdown procedures in the Plan of Study, including necessary corrective action(s), Northport shall perform another set of Wet Weather Sampling and document the results in a report.
- d. Northport shall continue to implement the trackdown procedures in its Plan of Study for each Priority Outfall until the following is completed and documentation is provided to EPA, New York, and NYSDEC, pursuant to Section VI (Reporting Requirements):
  1. Documentation demonstrating that Northport has completed a thorough trackdown investigation in accordance with the Plan of Study, including the elimination of identified illicit discharge(s);
  2. Another set of Wet Weather Sampling results are documented in a report that demonstrate the effectiveness of the corrective action(s);  
and
  3. A signed certification statement from Northport's Stormwater Management Officer that either (i.) all potential sources of illicit discharges to the Priority Outfall have been investigated and eliminated, or (ii.) all potential sources of illicit discharges to the Priority Outfall have been investigated and, nonetheless, Northport has been unable to identify and eliminate the sources of the illicit discharges, and thereafter, EPA, in consultation with NYSDEC, in its

sole discretion, provides written notice to Northport that it may terminate its trackdown procedures outlined in its Plan of Study for that Priority Outfall.

- e. For each Priority Outfall, upon EPA's and NYSDEC's confirmation of receipt of the three items in Paragraph 11(d)1,2, and 3 above, Northport shall thereafter address illicit discharges through implementation of its Illicit Discharge Detection and Elimination program, including trackdown procedures, as required by the MS4 Permit and in accordance with its Approved Storm Water Management Program Plan.
- f. The Parties agree that Northport has completed its trackdown procedures outlined in its Plan of Study with regard to the priority outfall on Main Street, marked on the accompanying Appendix A by the designation "MSPO" (Main Street Priority Outfall), and that, in its discretion, EPA has notified Northport that it may terminate trackdown procedures as outlined in its Plan of Study.

12. Storm Water Management Program Plan. Within 180 Days of the Effective Date, Northport shall submit to EPA and NYSDEC for approval an updated revised Storm Water Management Program Plan. The Storm Water Management Program Plan shall include a detailed written explanation of all management practices, activities and other techniques Northport has developed, planned or implemented to address pollutants of concern and reduce the discharge of pollutants from its MS4 to the maximum extent practicable, including Village-specific practices, policies and procedures addressing all six Minimum Control Measures and additional requirements for MS4s discharging to Pathogen Impaired Watershed Improvement Areas, as defined in the MS4 Permit. In addition to the requirements outlined above:

- a. Northport shall, as a component of Minimum Control Measure 3 (Illicit Discharge Detection and Elimination), identify Priority Outfalls, which, at a minimum, shall include outfalls where Dry Weather Sampling results or Wet Weather Sampling results required subsequent trackdown investigation(s) that are ongoing as of the Effective Date. Northport shall include provisions in its Storm Water Management Program Plan to conduct Dry Weather Inspections at the Priority Outfalls at a minimum frequency of once per year.
- b. Northport shall, as a component of Minimum Control Measure 3 (Illicit Discharge Detection and Elimination), develop a web-based complaint tool that allows members of the public to request information or submit complaints related to potential illicit discharges to the MS4.
- c. Northport shall commence implementation of all aspects of the Storm Water Management Program Plan within 30 Days of EPA's, in consultation with NYSDEC, approval of the Plan.
- d. Northport shall continue to update the Storm Water Management Program Plan in accordance with any applicable deadlines set forth in the most current version of the MS4 Permit.

13. The compliance requirements of this Consent Judgment do not relieve Northport of any compliance obligations required by the Act or its implementing regulations, or by any other federal or state law, regulation, permit, or other requirement.

14. Approval of Deliverables: After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Judgment, EPA, in consultation with NYSDEC, 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.

15. If the submission is approved pursuant to Paragraph 14(a), Northport shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements set forth in the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 14(b) or (c), Northport shall, upon written direction from EPA, in consultation with NYSDEC, take all actions required by the approved plan, report, or other item that EPA, in consultation with NYSDEC, determines are technically severable from any disapproved portions, subject to Northport's right to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).

16. If the submission is disapproved in whole or in part pursuant to Paragraph 14(c) or (d), Northport shall, within 45 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, Northport shall proceed in accordance with the preceding Paragraph 15.

17. Any stipulated penalties applicable to the original submission, as provided in Section VIII (Stipulated Penalties), shall accrue during the 45 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Northport's obligations under this Consent Judgment, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

18. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, in consultation with NYSDEC, may again require Northport to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to Northport's right to invoke Dispute Resolution procedures set forth in Section X (Dispute Resolution) and the right of the United States and New York to seek stipulated penalties as provided in the preceding paragraphs and Section VIII (Stipulated Penalties).

19. Permits. Where any compliance under this Section requires Northport to obtain a federal, state, or local permit or approval, Northport shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Northport may seek relief under the provisions of Section IX (Force Majeure) for 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 Northport has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

## **VI. REPORTING REQUIREMENTS**

20. Northport shall submit to EPA and NYSDEC all reports that are required to be generated pursuant to Paragraphs 10 through 12. The submission of such reports to EPA and NYSDEC shall be in accordance with the following schedule:

- (a) Northport shall submit a report of the results of the Dry Weather Inspections required by Paragraph 10(a) within 30 Days after the inspections are performed;

- (b) Northport shall submit a report of the results of the Dry Weather Sampling required by Paragraph 10(b) within 30 Days after the Sampling is performed;
- (c) Northport shall submit a report on the first set of results of Wet Weather Sampling of the Outfalls required by Paragraph 10(c) within 15 Days of the Effective Date, or, within 30 Days after the Sampling is performed, whichever is later;
- (d) Northport shall submit a report of the results of any subsequent Wet Weather Sampling required by Paragraphs 10(c) and 11(c) within 30 Days after the Sampling is performed.
- (e) Northport shall submit documentation required by Paragraphs 11(d)(1-3) within 30 Days after all potential sources of illicit discharges to the Priority Outfalls have been investigated and eliminated.
- (f) Northport shall submit to EPA and NYSDEC annually, on or before the anniversary of the Effective Date, a copy of the updated revised Storm Water Management Program Plan that incorporates the revisions required by Paragraph 12(d) that were made in the previous 365 Day period.

21. Quarterly Reports. Within 30 Days after the end of each calendar quarter (i.e., by April 30, July 30, October 30, and January 30) after the Effective Date, until termination of this Consent Judgment pursuant to Section XVIII (Termination), Northport shall submit to the United States, EPA, New York, and NYSDEC a quarterly report (Quarterly Report) for the preceding quarter that shall include:

- a. A description of the work completed during the preceding three months identified in Section V (Compliance Requirements), including (i) status of any

compliance measures, (ii) completion of milestones, (iii) problems encountered or anticipated, together with implemented or proposed solutions, (iv) operation and maintenance, (v) status of permit applications; and (vi) reports to State agencies;

- b. A description of any requirements of this Consent Judgment which were not complied with, the dates of such non-compliance, and an explanation of any violation's likely cause and the remedial steps taken, or to be taken, to prevent or minimize such violation; and
- c. If Northport has already submitted a deliverable to the EPA, the United States, NYSDEC, and New York, Northport shall in the Quarterly Report reference that deliverable and its date of submission.

22. The Parties shall meet as needed, on at least a semi-annual basis, to discuss the Quarterly Reports and Northport's ongoing progress towards implementation of the Consent Judgment.

23. If Northport violates, or has reason to believe that it may violate, any requirement of this Consent Judgment, Northport shall notify the United States and New York of such violation and its likely duration, in writing, within ten working Days of the Day Northport 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, Northport shall so state in the report. Northport 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 Northport becomes aware of the cause of the violation. Nothing in this Paragraph or the

following Paragraph relieves Northport of its obligation to provide the notice required by Section IX (Force Majeure).

24. Whenever any violation of this Consent Judgment or any other event affecting Northport's performance under this Consent Judgment may pose an immediate threat to the public health or welfare or the environment, Northport shall notify EPA and NYSDEC orally or by electronic transmission as soon as possible, but no later than 24 hours after Northport first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

25. All reports shall be submitted to the persons designated in Section XIV (Notices).

26. All Quarterly Reports, any other report, notice, protocol, plan, or any other document submitted by Northport under this Section shall be signed by an official of Northport 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.

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

28. The reporting requirements of this Consent Judgment do not relieve Northport of any reporting obligations required by the Act or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

30. Annual Report to the Court: On or before November 1 of each year after the lodging of this Consent Judgment, until its termination pursuant to Section XIX, the United States, in consultation with Northport and the State, shall submit to the Court an annual report on compliance and/or noncompliance with the requirements of this Consent Judgment. Northport and/or the State may submit to the Court a response or supplement to the United States' annual report to the Court on or before November 20 of each year.

## **VII. CIVIL PENALTY**

31. Within thirty (30) Days after the Effective Date, Northport shall pay the sum of one hundred and twenty-five thousand dollars \$125,000.00 as a civil penalty.

32. Payment shall be made directly to the United States and to the State. Half of the penalty (\$62,500) shall be paid to the United States and half (\$62,500) shall be paid to New York.

33. Northport shall pay the civil penalty due to the United States at <https://www.pay.gov> to the United States Department of Justice ("DOJ") account, in accordance with instructions provided to Northport by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Eastern District of New York after the Effective Date (Section XV). The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which Northport shall use to identify all payments required to be made to the United States in accordance with this Consent Judgment. The United States shall provide the payment instructions within ten Days of the Effective Date via e-mail to

the Northport Village Treasurer, Leonard Marchese, Village Hall, 224 Main St, Northport, NY 11768, 631-261-7502, L.Marchese@Northportny.gov on behalf of Northport. Northport may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIV (Notices).

34. At the time of payment, Northport shall send notice that payment has been made: (i) to the EPA Cincinnati Finance Office by e-mail at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States by e-mail or regular mail in accordance with Section XIV (Notices); and (iii) to EPA by mail in accordance with Section XIV (Notices). Such notice shall reference the CDCS Number, USAO number 2014V01570, and DOJ case number 90-5-1-1-11187.

35. Penalties due to New York shall be paid by tendering a check in the appropriate sum, payable to “New York State Department of Environmental Conservation” and sent by certified mail, return receipt requested, to the Office of the New York State Attorney General, Environmental Protection Bureau, 28 Liberty Street, 19th Floor, New York, New York 10005.

#### **VIII. STIPULATED PENALTIES**

36. Northport shall be liable for stipulated penalties to the United States and New York (payable to NYSDEC) for violations of this Consent Judgment as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Judgment, including any work plan or schedule approved under this Consent Judgment, according to all applicable requirements of this Consent Judgment and within the specified time schedules established by or approved under this Consent Judgment.

37. Late Payment of Civil Penalty. If Northport fails to pay the civil penalty required to be paid pursuant to Section VII (Civil Penalty) when due, Northport shall pay a stipulated penalty of \$500 per Day for each Day that the payment is late.

38. Compliance Requirements.

a. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Section V (Compliance Requirements):

Penalty Per Violation Per Day	Period of Noncompliance
\$500.00	1 <sup>st</sup> through 30 <sup>th</sup> Day
\$1,000.00	31 <sup>st</sup> through 59 <sup>th</sup> Day
\$2,000.00	60 <sup>th</sup> Day and beyond

39. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements set forth in Section VI (Reporting Requirements) as set forth in Paragraph 21:

Penalty Per Violation Per Day	Period of Noncompliance
\$300.00	1 <sup>st</sup> through 30 <sup>th</sup> Day
\$500.00	31 <sup>st</sup> through 59 <sup>th</sup> Day
\$2,000.00	60 <sup>th</sup> Day and beyond

40. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day that 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.

41. Northport shall pay any stipulated penalty within 30 Days of receiving either the United States' or New York's written demand.

42. The United States and/or New York may in the unreviewable exercise of their/its discretion, reduce or waive stipulated penalties otherwise due them/it under this Consent Judgment.

43. Stipulated penalties shall continue to accrue as provided in this Section during any Dispute Resolution (Section X), but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of EPA and/or NYSDEC that is not appealed to the Court, Northport shall pay accrued penalties determined to be owing, together with interest, to the United States and New York within 30 Days of the effective date of the Parties' agreement or the receipt of EPA's decision or order;
- b. If the dispute is appealed to this Court, and the United States and/or New York prevail in whole or in part, Northport shall pay all accrued penalties determined by this Court to be owing, together with interest, within 60 Days of receiving this Court's decision or order, except as provided in subparagraph c., below; and
- c. If any Party appeals this Court's decision to an appellate court, and the United States and/or New York prevails in whole or in part at the appellate court, Northport shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

44. Northport shall pay stipulated penalties owing to the United States and New York in the manner set forth and with the confirmation notices required by Paragraph 33, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

45. If Northport fails to pay stipulated penalties according to the terms of this Consent Judgment, Northport shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date on which payment became due. Nothing in this Section shall be construed to limit the United States and/or New York from seeking any remedy otherwise provided by law for Northport's failure to pay any stipulated penalties.

46. Non-Exclusivity of Remedy. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Judgment shall be in addition to any other rights, remedies, or sanctions available to the United States and New York for Northport's violation of this Consent Judgment or applicable law. Where a violation of this Consent Judgment is also a violation of the Act, Northport shall be allowed a credit, for any stipulated penalties paid, against any statutory penalty imposed for such violation.

#### **IX. FORCE MAJEURE**

47. "Force majeure," for purposes of this Consent Judgment, is defined as any event arising from causes beyond the control of Northport, of any entity controlled by Northport, or of Northport's contractors, that delays or prevents the performance of any obligation under this Consent Judgment despite Northport's best efforts to fulfill the obligation. The requirement that Northport 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 event (a) as it is occurring, and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force majeure" does not include Northport's financial inability to perform any obligation under this Consent Judgment.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Judgment, whether or not caused by a force majeure event,

Northport shall provide notice orally, and by electronic transmission and certified mail to the United States, EPA, New York, and NYSDEC in accordance with the notice provisions of Section XV (Notices), within 72 hours of when Northport first knew or should have known that the event might cause a delay. Within seven Days thereafter, Northport shall provide in writing to the United States, EPA, New York, and NYSDEC an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Northport's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Northport, such event may cause or contribute to an endangerment to public health, welfare or the environment. Northport shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Northport from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Northport shall be deemed to know of any circumstance of which Northport, any entity controlled by Northport, or Northport's contractors knew or should have known.

49. If EPA, in consultation with NYSDEC, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Judgment that are affected by the force majeure event will be extended by EPA and NYSDEC for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Northport in writing of the

length of the extension, if any, for performance of the obligations affected by the force majeure event.

50. If EPA, in consultation with NYSDEC, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Northport in writing of its decision.

51. If Northport elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), with regard to a force majeure determination, it shall do so no later than 21 Days after receipt of EPA's written notice. In any such proceeding, Northport shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Northport complied with the requirements of this Section of the Consent Judgment. If Northport carries this burden, the delay at issue shall be deemed not to be a violation by Northport of the affected obligations of this Consent Judgment identified to the United States, EPA, New York, NYSDEC, and the Court.

#### **X. DISPUTE RESOLUTION**

52. 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. Northport's failure to seek resolution of a dispute under this Section shall preclude Northport from raising any such issue as a defense to an action by the United States, New York, and/or NYSDEC to enforce any obligation of Northport arising under this Consent Judgment.

53. 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 Northport sends the United States and New York a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 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 the United States, after consultation with New York, shall be considered binding unless, within 14 Days after the conclusion of the informal negotiation period, Northport invokes the formal dispute resolution procedures as set forth below.

54. Formal Dispute Resolution. Northport shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and New York 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 Northport's position and any supporting documentation relied upon by Northport.

55. The United States and New York shall serve their Statement of Position upon Northport within 45 Days of receipt of Northport's Statement of Position. The United States' and New York's Statement of Position shall include, but need not be limited to, factual data, analysis, or opinion supporting that position and supporting documentation relied upon by the United States and New York. The United States' and New York's Statement of Position shall be binding on Northport, unless Northport files a motion for judicial review of the dispute, in accordance with the following Paragraph.

56. Northport may seek judicial review of the dispute by filing with the Court and serving on the United States and New York, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion (or, if the Court requires the filing of a pre-motion letter before the filing of a motion, pre-motion letter) must be filed within 30 Days of receipt of the United States' and New York's Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Northport's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Judgment.

57. The United States and New York shall respond to Northport's motion within the time period allowed by the Local Rules of this Court or by Court order modifying such time period. Northport may file a reply memorandum, to the extent permitted by the Local Rules, or by Court order.

58. Standard of Review.

- a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Judgment, in any dispute brought under Paragraph 53 pertaining to the adequacy or appropriateness of Northport's submissions or filings, schedules or any other items requiring approval by EPA, in consultation with NYSDEC, under this Consent Judgment; the adequacy of the performance of work undertaken pursuant to this Consent Judgment; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Northport shall have the burden of demonstrating, based on the administrative record, that the position of the

United States and New York 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 51, Northport shall bear the burden of proving that its position complies with this Consent Judgment and better furthers the objectives of this Consent Judgment.

59. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Northport 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 payment shall be stayed pending resolution of the dispute as provided in Paragraph 43. If Northport does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

#### **XI. INFORMATION COLLECTION AND RETENTION**

60. The United States, EPA, New York, and NYSDEC and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the MS4 system covered by this Consent Judgment, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Judgment;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Judgment;
- c. obtain samples and, upon request, splits of any samples taken by Northport or its representatives, contractors or consultants;

- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Northport's compliance with the Consent Judgment.

61. Upon request, Northport shall provide EPA and NYSDEC or their authorized representatives splits of any samples taken by Northport. Upon request, EPA and NYSDEC shall provide Northport splits of any samples taken by EPA.

62. Until five years after the termination of this Consent Judgment, Northport shall retain, 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 Northport'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 the United States and/or EPA, and New York and/or NYSDEC, Northport shall provide copies of any non-privileged documents, records, or other information required to be maintained under this Paragraph to the United States, EPA, New York and NYSDEC.

63. For purposes of this Section and Section VIII (Stipulated Penalties), Northport shall be required to preserve at least the following records, logs, and documents:

- a. Dry Weather Inspection records, including date, time, weather conditions (including precipitation data for the preceding 48 hours), personnel involved, and photographs;

- b. Dry Weather Sampling results, including date, time, weather conditions (including precipitation data for the preceding 48 hours), personnel involved, and laboratory data;
- c. Wet Weather Sampling results, including date, time, weather conditions (including precipitation data for the preceding 48 hours), personnel involved, and laboratory data;
- d. Detailed documentation of all illicit discharge trackdown activities, including a written description of the investigation(s) performed, date initiated, equipment used, personnel involved, and findings (including photographs, video footage, and results of sampling and field testing, as applicable);
- e. Documentation of completed corrective actions made in response to illicit discharge trackdown investigation(s), including photographs, completion reports, invoices, etc.;
- f. Computerized or other written maintenance management system files in which MS4 maintenance information is loaded or otherwise recorded including job orders for corrective or preventive maintenance for the MS4;
- g. The Storm Water Management Program Plan, including any revisions thereto; and
- h. The Storm Water Management Program Plan revision log.

64. At the conclusion of the information-retention period provided in Paragraph 61, Northport shall notify the United States and New York at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of Paragraph 61 and, upon request by the United States and/or New York, Northport shall deliver any such documents,

records, or other information to EPA and NYSDEC. Northport may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Northport 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 Northport. 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.

65. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States, EPA, New York, or NYSDEC pursuant to applicable laws, regulations, or permits, nor does it limit or affect any duty or obligation of Northport to maintain documents, records, or other information imposed by applicable laws, regulations, or permits.

## **XII. EFFECT OF SETTLEMENT/RESERVATIONS OF RIGHTS**

66. This Consent Judgment resolves the civil claims of the United States and New York for the violations alleged in the Complaint filed in this action through the Date of Lodging.

67. Reservation of Rights. The United States and New York reserve all legal and equitable remedies available to enforce the provisions of this Consent Judgment, except as expressly stated in the preceding Paragraph 66. This Consent Judgment shall not be construed to limit the rights of the United States, New York, EPA and/or NYSDEC to obtain penalties or injunctive relief under the Act or implementing regulations, or under other laws, regulations, or permit conditions except as expressly specified in the preceding Paragraph 66. The United

States, New York, EPA and/or NYSDEC further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Northport, whether related to the violations addressed in this Consent Judgment or otherwise.

68. In any subsequent administrative or judicial proceeding initiated by the United States, New York, EPA and/or NYSDEC for injunctive relief, civil penalties, or other appropriate relief relating to Northport's violations, Northport shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses, based upon any contention that the claims raised by the United States 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 66.

69. This Consent Judgment is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Northport is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Northport'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. The United States and/or New York do not, by their consent to the entry of this Consent Judgment, warrant or aver in any manner that Northport's compliance with any aspect of this Consent Judgment will result in compliance with any provision of the Act, or with any other provisions of federal, state, or local laws, regulations, or permits.

70. Nothing in the Consent Judgment limits the rights or defenses available under Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

71. Nothing in the Consent Judgment limits the rights or defenses available under Article 17, Titles 7 and 8 of the ECL, including enforcement against noncompliance with SPDES permits.

72. This Consent Judgment does not limit or affect the rights of Northport or of the United States, New York, EPA, and/or NYSDEC against any third parties, not party to this Consent Judgment, nor does it limit the rights of third parties, not party to this Consent Judgment, against Northport, except as otherwise provided by law.

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

### **XIII. COSTS**

74. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and New York 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 Northport.

### **XIV. NOTICES**

75. Unless otherwise specified in this Consent Judgment, whenever notifications, submissions, or communications are required by this Consent Judgment, they shall be made in writing, include a reference to the case name, caption and docket number of this action, and sent by electronic and certified mail, return receipt requested, as follows:

As to the United States by email:     deborah.zwany@usdoj.gov

  eescasemanagement\_enrd@usdoj.gov

  Re: DJ # 90-5-1-1-11187

As to the United States by mail:

Deborah B. Zwany  
Senior Litigation Counsel  
United States Attorney's Office  
Eastern District of New York  
271A Cadman Plaza East  
Brooklyn, NY 11201

Chief, Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-1-1-11187

As to EPA:

Phyllis Feinmark, Chief  
Water and General Law Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007  
feinmark.phyllis@epa.gov

Douglas McKenna, Chief  
Water Compliance Branch  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 20th Floor  
New York, NY 10007  
mckenna.douglas@epa.gov

As to Northport:

Northport Village Clerk  
224 Main Street  
Northport, New York 11768  
NPTClerk@optonline.net

Stuart P. Besen  
Milber Makris Plousadis & Seiden, LLP  
1000 Woodbury Road, Suite 402  
Woodbury, New York 1176  
sbesen@milbermakris.com

As to New York:

Abigail Rosner  
Assistant Attorney General  
Office of the New York State Attorney General  
28 Liberty Street  
New York, New York 10005  
abigail.rosner@ag.ny.gov

As to NYSDEC:

Dena Putnick, Chief  
General Enforcement Bureau  
Office of General Counsel  
New York State Department of Environmental  
Conservation  
625 Broadway – 14<sup>th</sup> Floor  
Albany, New York 12233-1500  
dena.putnick@dec.ny.gov

76. Any Party may, by written notice to the other Party, change its designated notice recipients or notice addresses provided above.

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

78. Documents required to be submitted under the terms of this Consent Judgment may be submitted electronically to all parties required to receive the documents, provided a paper copy is timely submitted to the Chief of the Water Compliance Branch of the EPA, Chief of the Water and General Law Branch of the EPA, and Chief of the General Enforcement Bureau of NYSDEC.

#### **XV. EFFECTIVE DATE**

79. The “Effective Date” of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court or a motion to enter the Consent Judgment is granted, whichever occurs first, as recorded on the Court’s docket.

#### **XVI. RETENTION OF JURISDICTION**

80. The Court shall retain jurisdiction over this action until termination of this Consent Judgment, for the purposes of resolving disputes arising under this Consent Judgment, or entering orders modifying this Consent Judgment, pursuant to Sections X (Dispute

Resolution) and XVII (Modification) of this Consent Judgment, or effectuating or enforcing compliance with the terms of this Consent Judgment.

#### **XVII. MODIFICATION**

81. The terms of this Consent Judgment, including its appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Judgment, it shall be effective only upon approval by the Court.

82. Any disputes concerning modification of this Consent Judgment shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 58, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### **XVIII. TERMINATION**

83. After Northport has: (i) completed all of the requirements set forth in Section V (Compliance Requirements), Section VI (Reporting Requirements), Appendix B, and all other requirements of this Consent Judgment to the satisfaction of the United States and New York; and (ii) has paid the civil penalty and any accrued stipulated penalties as required by this Consent Judgment, Northport may serve upon the United States and New York a Request for Termination, stating that Northport has satisfied those requirements, together with all necessary supporting documentation.

84. Following the United States' and New York's receipt of Northport's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Northport has satisfactorily complied with the

requirements for termination of this Consent Judgment. If the United States and New York agree that this Consent Judgment may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Judgment.

85. If the United States and New York do not agree that the Consent Judgment may be terminated, Northport may invoke Dispute Resolution under Section X (Dispute Resolution) of this Consent Judgment. However, Northport shall not seek Dispute Resolution under Paragraph 54 (Formal Dispute Resolution) of any dispute regarding termination until 90 Days after service of its Request for Termination.

### **XIX. PUBLIC PARTICIPATION**

86. This Consent Judgment shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and New York reserve the right to withdraw or withhold their consent to the entry of this Consent Judgment if the comments regarding the Consent Judgment disclose facts or considerations indicating that the Consent Judgment is inappropriate, improper, or inadequate. Northport consents to entry of this Consent Judgment without further notice and agrees not to withdraw from or oppose entry of this Consent Judgment by the Court or to challenge any provision of this Consent Judgment, unless the United States and New York have notified Northport in writing that they no longer supports entry of this Consent Judgment.

### **XX. SIGNATORIES AND SERVICE**

87. Each undersigned representative of Northport, the State, and the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and to execute and legally bind the Party he or she represents to this Consent Judgment.

88. This Consent Judgment may be signed in counterparts, and its validity shall not be challenged on that basis. Northport 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 Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### **XXI. INTEGRATION**

89. This Consent Judgment constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Judgment and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are to be subsequently submitted and approved pursuant to this Consent Judgment, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Judgment or the settlement it represents, nor shall it be used in construing the terms of this Consent Judgment.

#### **XXII. APPENDICES**

90. The following appendices are attached to and part of this Consent Judgment:

“Appendix A” is the map and table of nineteen active Outfalls owned by

Northport.

“Appendix B” is the Plan of Study.

**XXIII. FINAL JUDGMENT**

91. 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 United States, New York and Northport.

\* \* \* \* \*

DATED and ENTERED this \_\_\_\_ Day of \_\_\_\_\_, 2020:

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

The Parties, by their undersigned representatives, enter into this Consent Judgment in the action entitled *United States et al. v. Village of Northport*.

**FOR THE PLAINTIFF UNITED STATES OF AMERICA:**

Dated: Washington, D.C.  
2/5, 2020



JEFFREY BOSSERT CLARK  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice

Dated: Brooklyn, New York  
February 20, 2020

RICHARD P. DONOGHUE  
United States Attorney for the  
Eastern District of New York



By:

DEBORAH B. ZWAN  
MATTHEW SILVERMAN  
Assistant United States Attorneys  
United States Attorney's Office  
Eastern District of New York  
271 A Cadman Plaza East  
Brooklyn, NY 11201

Attorneys for the United States of America

The Parties, by their undersigned representatives, enter into this Consent Judgment in the action entitled *United States et al. v. Village of Northport*.

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

Dated: New York, New York

Jan. 24, 2019  
2020



ERIC SCHAAF  
Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007

OF COUNSEL:

KARA E. MURPHY  
Assistant Regional Counsel  
Water and General Law Branch  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007

The Parties, by their undersigned representatives, enter into this Consent Judgment in the action entitled *United States et al. v. Village of Northport*.

**FOR PLAINTIFF STATE OF NEW YORK**

Dated: New York, New York  
January 23, 2020

LETITIA JAMES  
Attorney General for the State of New York

By: 

ABIGAIL ROSNER  
Assistant Attorney General  
28 Liberty Street  
New York, New York 10005

Attorney for the State of New York

The Parties, by their undersigned representatives, enter into this Consent Judgment in the action entitled *United States et al. v. Village of Northport*.

**FOR THE DEFENDANT VILLAGE OF NORTHPORT:**

Dated: Northport, New York  
January 9, ~~2019~~  
2020



DAMON McMULLEN  
Mayor, Commissioner of Public  
Works and Highways

Dated: Northport, New York  
January 9, ~~2019~~  
2020



Stuart Besen, Esq.  
Village Attorney

# APPENDIX A

Outfall_ID	Dimen_inch	Material	Village of Northport Comments	Additional Comments	TOH_RcvWtr	TOH_InspDate	TOH_Insp	TOH_Type	TOH_DryFlow	TOH_Type_1	TOH_DataSource	TOH_Confidence
2	36	metal	01/03/17 Confirmed Outfall		northport harbor	11/5/2007	m.s.	pipe	no	outfall	gps	verified
3	18	concrete	01/03/17 Confirmed Outfall	retention pond overflow from harbor point	northport harbor	11/5/2007	m.s.	pipe	yes	outfall	gps	verified
4	18	concrete	01/03/17 Confirmed Outfall	retention pond overflow from harbor point	northport harbor	11/5/2007	m.s.	pipe	yes	outfall	gps	verified
5	18	concrete	01/03/17 Confirmed Outfall	retention pond overflow from harbor point	northport harbor	11/5/2007	m.s.	pipe	yes	outfall	gps	verified
24	12	ceramic	11/30/16 Confirmed Outfall		northport harbor	11/8/2007	m.s.	pipe	yes	outfall	gps	verified
25	14	plastic	11/30/16 Confirmed Outfall		northport harbor	11/8/2007	m.s.	pipe	no	outfall	gps	verified
26	6	plastic	11/30/16 Confirmed Outfall		northport harbor	11/8/2007	m.s.	pipe	yes	outfall	gps	verified
27	36	plastic	11/30/16 Confirmed Outfall		northport harbor	11/8/2007	m.s.	pipe	yes	outfall	gps	verified
28	48	concrete	11/30/16 Confirmed Outfall	Main Street Priority Outfall ("MSPO") pursuant to paragraph V.11.f of the CJ.	northport harbor	11/8/2007	m.s.	pipe	yes	outfall	gps	verified
29	6	metal	11/30/16 Confirmed Outfall		northport harbor	11/8/2007	m.s.	pipe	yes	outfall	gps	verified
30	6	plastic	11/30/16 Confirmed Outfall		northport harbor	11/8/2007	m.s.	pipe	yes	outfall	gps	verified
31	6	plastic	11/30/16 Confirmed Outfall		northport harbor	11/8/2007	m.s.	pipe	yes	outfall	gps	verified
32	24	plastic	11/30/16 Confirmed Outfall		northport harbor	11/8/2007	m.s.	pipe	yes	outfall	gps	verified
36	30	concrete	11/30/16 Confirmed Outfall		northport harbor	11/8/2007	m.s.	pipe	yes	outfall	gps	verified
43	18	concrete	01/03/17 Confirmed Outfall	metal bands over end	northport harbor	11/8/2007	m.s.	pipe	no	outfall	gps	verified
51a	30	concrete	01/03/17 Confirmed Outfall	Outfall #51a is identified as Northport's pipe that collects runoff from two catch basins on Milland Drive and flows into outfall pipe #52, which is a NYSDOT owned and maintained pipe. Northport is responsible for inspecting and sampling at outfall #51a, downstream of the two catch basins and before the connection with NYSDOT's pipe. Sampling point identified at drain inlet at south side of 46 Milland Dr.	northport harbor	11/8/2007	m.s.	pipe	yes	outfall	gps	verified
54	16	concrete	01/03/17 Confirmed Outfall	from cb at end of milland dr	northport harbor	11/20/2007	m.s.	pipe	yes	outfall	gps	verified
60	24	concrete	01/03/17 Confirmed Outfall	Access by waders only in wetlands south side of 12 Beach Ave.	northport harbor	11/21/2007	m.s.	pipe	yes	outfall	gps	verified
63	24	Cor. plastic	01/03/17 Confirmed Outfall	sample from upstream drain manhole at end of Hollacher Dr.	northport bay	11/21/2007	m.s.	pipe	unk	outfall	gps	verified
Notes:	1. Origin of data provided in table is based on information obtained by Town of Huntington under (MS4) activities.											
	2. Table is extracted from the Town provided Geographic Information System and modified to reflect the most recent activities by the Village.											
	3. The "Outfall_ID" field and numbering system was established by the Town.											
	4. TOH refers to Town of Huntington											
	5. Table updates and corrections made by Village 11-15-18.											
	6. Table updates made by EPA on 7-31-19 to remove NYSDOT outfalls #52 and #53, add description for outfall #51, and identify the MSPO.											



# APPENDIX B



VILLAGE *of* NORTHPORT  
INCORPORATED IN 1894

*224 Main Street, Northport, New York 11768, 631-261-7502, fax: 631-261-7521*

Douglas Mckenna, Chief  
Water Compliance Branch  
USEPA, Region 2  
290 Broadway  
New York, New York 10007-1866

Joe DiMura, P.E., Director  
Bureau of Water Compliance Programs  
Division of Water  
NYSDEC 625 Broadway  
Albany, New York 12233-3506

RE: Administrative Order on Consent CWA-02-2012-3012  
Village of Northport  
SPDES Permit No. NY-0024881

Dear Mr. Mckenna,

Enclosed is the Village of Northport Plan of Study (POS) to undertake the IDDE work.  
Should you have any comments issues or concerns about the enclose POS please contact me directly at  
631-261-2370 so I can adjust the enclosed plan and proceed with it next week as stated.

Sincerely,

A large black rectangular redaction box covering the signature area. To the right of the box, the number '13' is handwritten.

Village Administrator  
Village of Northport

**PROCEDURE OUTLINE FOR ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE) –  
“TRACKDOWN”**

**BACKGROUND**

The New York State Department of Environmental Conservation's (NYSDEC) current State Pollutant Discharge Elimination System (SPDES) General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) is Permit No. GP-0-10-002 version 10/14/11. The Incorporated Village of Northport's (Village) SPDES ID is NYR20A303.

Northport Harbor's Pollutant of Concern (POC) is Pathogens.<sup>1</sup>

The Incorporated Village of Northport's municipal small storm sewer system (MS4) is separate from the Village's sanitary sewer system; thus, the Village's sanitary system is not a combined sewer system.

During 2007/2008, Cornell Cooperative Extension (CCE) sampled various areas of the Village's waters developing foundation data on which to base the Village's approaches to the improvement of the water quality of the waters of the Incorporated Village of Northport.

Furthermore, EPA performed sampling and testing<sup>2</sup> on December 6-7, 2011 that identified four (4) "hot spots":

- Main Street Park North-48" Pipe
- House #99 outfall (Bayview Ave)
- Stanton St. & Bayview Ave. (catch basin)
- End of Main St. Park North 12"outfall.

The Village will utilize several investigative methods to accomplish IDDE ("trackdown"), including an IDDE Complaint Hotline, a dedicated phone number or the Village's website, where residents and businesses can easily report illicit discharge and pollution concerns. A prompt investigation of each complaint by trained, Village staff will follow a reported incident, usually within 24 hours. The IDDE hotline (named "Stormwater Tipline")<sup>3 4</sup> - which has already been announced in the Village's 2013 recycle calendar - will facilitate the trackdown of intermittent and transitory discharges, possibly one of the most effective tools to isolate illicit discharges.

The Incorporated Village of Northport continues to collaborate with the New York State Department of Transportation and Suffolk County Department of Health Services on meeting New York State water quality standards and improving the Village's waters.

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<sup>1</sup> SPDES General Permit for Stormwater Discharge from MS4s, GP-0-10-002 Modified October 2011, Part IX.C.

<sup>2</sup> Total coliforms and fecal coliforms

<sup>3</sup> STORMWATER TIPLINE: 631-261-7502 ext. 313 - an anonymous caller is able to leave a message for the Village

<sup>4</sup>: State and Federal laws require us to reduce the negative effects of stormwater runoff entering our Harbor and Bay. Stormwater runoff is excess rain or snowmelt carrying sediment and toxic materials (chemicals, fertilizer, motor oil, chlorinated pool water, animal waste, cigarette butts, other debris, etc.) that harm our wetlands, water life and recreational water use. Stormwater runoff can also lead to beach closings.

• Dumping debris, paint, solvents, other waste matter into Northport's storm drains & basins are illegal.

• Illicit hookups of wastewater pipes, washing machines, toilets, etc. to our Village's storm drains & basins are illegal.

• Please participate by keeping stormwater on your property, our beaches clean, our environment safe. This will improve our waterways.

• Please call the Stormwater Tipline with any information or concerns regarding our Harbor and Bay.

**PROCEDURE**

Under the supervision of the Village Administrator:

1. Based on EPA's December 6-7, 2011 sampling and testing data, the Village will begin its trackdown at the locations (sites):
  - Main Street Park North-48" Pipe
  - House #99 outfall (Bayview Ave)
  - Stanton St. & Bayview Ave. (catch basin)
  - End of Main St. Park North 12"outfall
 as identified by the Federal Environmental Administration (EPA) by sampling and testing at these locations.
  - a. These sites will be specifically documented by Global Positioning System (GPS).
2. The marker for POC/Pathogen trackdown will be measurement of the median most probable number (MPN) value in any series of representative samples that are in excess of 70 MPN per 100 ml for Total Coliforms (TC). This is the NYSDEC standard for Class SA waters<sup>6</sup>.
  - a. Additionally, measurement of the median most probable number (MPN) value in any series of representative samples shall not be in excess of 2,000 MPN per 100 ml for Fecal Coliforms (FC).<sup>7</sup>
  - b. TC are a group of bacteria that are widespread in nature. TC can occur in human feces, but some can also be present in animal manure, soil, submerged wood and in other places outside the human body.
  - c. FC are a subset of TC and are more fecal-specific in origin. However, FC can contain a genus of bacteria, *Klebsiella*, with species that are not necessarily fecal in origin. EPA suggests considering monitoring via more fecal and human-specific bacteria. (For recreational waters, EPA has begun recommending *E. coli* and *enterococci* as better indicators of health risk from water contact).<sup>8</sup>
3. Initially, on or about March 6, 2013 (depending on the weather - wet versus dry weather sampling) the Village will resample the sites in paragraph 1 (sites) at their outfalls to verify the presence of TC exceeding NYSDEC standards and FC.
  - a. This sampling will be analyzed for TC and FC by a New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP) accredited laboratory (pilot tests).
    1. Dry and wet weather sampling and testing will be performed by a NYSDOH ELAP accredited laboratory as a starting point (pilot sampling and testing).

<sup>6</sup> 6 NYCRR §703.4 Water quality standards for coliforms  
Total and fecal coliform standards for specific classes are provided in this section.

(a) Total coliforms (number per 100 ml).

Classes	<i>Standard</i>
AA	The monthly median value and more than 20 percent of the samples, from a minimum of five examinations, shall not exceed 50 and 240, respectively.
A, B, C, D, SB, SC	The monthly median value and more than 20 percent of the samples, from a minimum of five examinations, shall not exceed 2,400 and 5,000, respectively.
SA	The median most probable number (MPN) value in any series of representative samples shall not be in excess of 70.
I	The monthly geometric mean, from a minimum of five examinations, shall not exceed 10,000.
A-Special	The geometric mean, of not less than five samples, taken over not more than a 30-day period shall not exceed 1,000.
GA	The maximum allowable limit is 50.

(b) Fecal coliforms (number per 100 ml).

Classes	<i>Standard</i>
A, B, C, D, SB, SC	The monthly geometric mean, from a minimum of five examinations, shall not exceed 200
I	The monthly geometric mean, from a minimum of five examinations, shall not exceed 2,000.
A-Special	The geometric mean, of not less than five samples, taken over not more than a 30-day period shall not exceed 200.

(c) The total and fecal coliform standards for classes B, C, D, SB, SC and I shall be met during all periods:

- (1) when disinfection is required for SPDES permitted discharges directly into, or affecting the best usage of, the water; or
- (2) when the department determines it necessary to protect human health.

Historical Note: Sec. filed March 20, 1967; repealed, new filed: April 28, 1972; Aug. 2, 1978; amd. filed Nov. 5, 1984; repealed, new filed Aug. 2, 1991; amds. filed: Dec. 10, 1993; Jan. 17, 2008 eff. 30 days after filing. Amended (c).

<sup>6</sup> Administrative Order on Consent CWA-02-2012-3012, Statutory Authority, Paragraph 12.

<sup>7</sup> Table, Analytical Results, NPDES MS4 SAMPLING INSPECTION, Village of Northport, New York NYR20A303, December 6-7, 2011. Please note: This is the NYSDEC standard for Class I waters. <sup>6</sup> NYCRR §703.4(b). There is no NYSDEC Fecal Coliform standard for Class SA water.

<sup>8</sup> <http://water.epa.gov/type/rsll/monitoring/vrns511.cfm>

- b. Sampling and testing will be performed in both wet weather, on a biweekly schedule and dry weather after three days of no rain.
    1. This sampling will be analyzed for TC and FC by the Village's wastewater treatment facility's laboratory and staff.
    2. The results will be tabulated and analyzed for possible sources of illicit discharges.
  - c. The results will be reviewed by the Village Administrator and the Village's consulting, Board Certified Pathologist.
  - d. Results of the sampling and testing that meet NYSDEC standards for TC and at or less than 2,000 MPN per 100 ml for FC will be re-sampled, tested for TC and FC and certified by a New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP) of the Wadsworth Center.
  - e. Any NYSDOH ELAP certified results that meet NYSDEC standards for TC and that are at or less than 2,000 MPN per 100 ml for FC will be forwarded to EPA.
4. The Village will identify by GPS those segments, e.g., pipes, catch basins, manholes, etc., of its stormwater conveyance system associated with the individual outfalls identified in paragraph 1 that show pilot testing in excess of 70 MPN per 100 ml for TC and/or in excess of 2,000 MPN per 100 ml for FC.
    - a. Utilizing the Village's existing stormwater and sanitary sewer system maps, the Village will continue sampling and testing upstream from the outfalls and from points where major system segments converge so as to eliminate segments determined not to be contributing TC in excess of 70 MPN per 100 ml and/or FC in excess of 2,000 MPN per 100 ml.
    - b. By sampling and testing multiple locations within that site's (sites') flow, the Village will attempt to segregate the illicit source to determine where to begin physical inspections of that isolated outfall pipe or its branch or segment ("trackdown").
  5. Where sampling and testing indicates a possible source of illicit discharge, a subsequent investigation(s) will be performed.
    - a. Storm drain inspection: To narrow the source of a potential illicit connection/discharge, the Village will use one of several investigative methods ("trackdown"):
      - Visual inspection at drains/manholes
      - Sandbagging or damming at the trunk
      - Dye testing
      - Smoke testing
      - Video testing (camera inspection)(portable video camera inspection system)("camera-ing")These investigative methods will also identify any illicit/illegal connections, cross connections, leaking or failing joints, collapsed lines, or Infiltration/Inflow (I/I).
    - b. Both the Village's storm sewer system and sanitary sewer system will be inspected with a portable video inspection system to ascertain the condition of their respective, separate pipes.<sup>9</sup> Where a suspect connection or compromised pipe is discovered an investigative method, e.g., dye test, will be performed to verify the pipe's condition.
      1. As part of the Village's Sewage Treatment Plant's State Pollution Discharge Elimination System (SPDES) Discharge Permit <sup>10</sup> compliance program the Village's sanitary sewer system will be inspected, further enhancing the detection and elimination of any illicit/illegal connections, cross connections, leaking or failing joints, collapsed lines, or I/I.
    - c. Catch basins contributing to a suspect pipe or outfall demonstrating TC in excess of 70 MPN per 100 ml and/or FC in excess of 2,000 MPN per 100 ml will be investigated for illegal dumping or deleterious flows.
  6. Upon each identification ("specific trackdown") of an illicit discharge, the Village will appropriately document, by sketch and photos, each offending site or facility.
    - a. Should the illicit discharge be due to a municipal operation, the Village will immediately undertake corrective action.
      1. If the source of the suspected illicit discharges is part of the Village's storm sewer system, the Village will identify and prepare an engineering plan(s) to eliminate the issue causing the introduction of TC and/or FC into the Village's storm water system.
    - b. Should the illicit discharge be due to a business, homeowner, non-municipal operation, etc., the Village will formally notify the offender (e.g., homeowner, business) of the illicit discharge/illicit connection/illicit dumping/illegal hookups and the time constraint required for the offender to correct the violation by eliminating or re-routing the illicit discharge/illicit connection/illicit dumping/illegal hookups into a proper point

<sup>9</sup> The Village's storm sewer system is separate from the Village's system sanitary sewer system. The Village's sanitary system is not a combined sewer system.

<sup>10</sup> SPDES #: NY-0024881, DEC #: 1-4726-00172/00001, Expiration Date: 03/31/15

- of discharge.
- c. The Village's storm sewer system will be cleaned; e.g., using the Village's Jet-Vac, after the elimination of an illicit discharge/illicit connection/illicit dumping/illegal hookups.
  - d. Subsequently, the affected and corrected portion of the Village's storm sewer system will be sampled and tested for TC and FC.
    1. Any NYSDOH ELAP certified results that meet NYSDEC standards for TC and that are at or less than 2,000 MPN per 100 ml for FC will be forwarded to EPA.
    2. Results demonstrating TC in excess of 70 MPN per 100 ml and/or FC in excess of 2,000 MPN per 100 ml will be investigated further by one of the several investigative methods listed in paragraph 5.
  - e. The Village will continue the investigation(s), being concerned that there may another cause(s) for results demonstrating TC in excess of 70 MPN per 100 ml and/or FC in excess of 2,000 MPN per 100 ml.
  - f. The Village will keep these findings on file.
7. The Village will utilize unannounced visual inspection of any and all offending premises/sites on a yearly or more frequent timeframe schedule, if the Village deems it necessary, to deter any further repetition of any and all the illicit discharge/illicit connection/illicit dumping/illegal hookups in order to prevent any violation(s)/discharge(s) from recurring.
8. Once completing trackdown at:
- Main Street Park North-48" Pipe
  - House #99 outfall (Bayview Ave)
  - Stanton St. & Bayview Ave. (catch basin)
  - End of Main St. Park North 12"outfall
- as identified by the Federal Environmental Administration (EPA) by sampling and testing on December 6-7, 2011 sampling and testing data, the Village will begin sampling, testing, and any necessary trackdown at Village outfalls following the procedures used at the above sites (Paragraphs 3 through 7).
- a. The Village will examine the next priority outfall pipe(s) by starting to sample the outfall pipe with the highest level of TC and/or FC, using the same, above procedure and techniques, and continue to investigate all outfalls in the same manner until all outfall sampling and test produce results meet NYSDEC SA waters <sup>11</sup> standards for TC and at or less than 2,000 MPN per 100 ml for FC thus detecting and eliminating any and all illicit discharge/illicit connection/illicit dumping/illegal hookups contaminating of the Village's SA waters. <sup>12</sup>
9. Upon complete detection and elimination of any and all illicit discharges, the Village will inspect 25% of the Village's outfall system and of those outfalls having the dry weather flow to identify any potential or recurring problems and identify any new illicit discharge/illicit connection/illicit dumping/illegal hookups should they become manifest.
10. Public and Municipal Involvement
- The Village will educate its public and business about the prevention, hazards and elimination of illicit discharges such as:
- Improper disposal of household toxics
  - Improper oil disposal
  - Laundry wastewaters
  - Spills
  - Spills from roadway accidents
  - Car wash wastewater
  - Garage drain effluent
  - Waste motor oil
  - Improper disposal of auto and toxics
  - Radiator flushing disposal
- An Illicit Discharge can be any other non-permitted discharge which Northport or NYSDEC has determined to be a substantial contributor of pollutants to Northport's waters.

<sup>11</sup> 6 NYCRR § 703.4(a)

<sup>12</sup> The Village will take necessary steps to meet NYSDEC standards as specified in 6 NYCRR § 703.4(a). The Village realizes that meeting these standards may be difficult or not achievable; the Village will take necessary steps to approach these standards reasonably.