

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007

IN THE MATTER OF:

New York State Department of
Transportation
50 Wolf Road
Albany, NY 12232
SPDES Permit No. NYR20A288

Respondent.

Proceeding pursuant to Section 309(g)
of the Clean Water Act, 33 U.S.C. § 1319(g)

Hon. Susan L. Biro

Proceeding to Assess Class II
Civil Penalty Pursuant to Section
309(g) of the Clean Water Act

Docket No. CWA-02-2016-3403

JOINT STIPULATIONS

Pursuant to the November 22, 2017, order of this Court entitled, "ORDER ON RESPONDENT'S MOTIONS FOR EXTENSION OF TIME," which set the date of January 12, 2018, for the parties to "file a Joint Set of Stipulated Facts, Exhibits, and Testimony,"¹ the parties hereto, by their respective counsel, hereby agree and stipulate to, and accept, the following:

I. Stipulated Facts

The following facts have been established and are to be deemed admitted for all purposes pertaining to or otherwise in connection with the administrative hearing to be held in and for the above-referenced proceeding:

1. Respondent is the New York State Department of Transportation ("NYSDOT").
2. NYSDOT is a public agency established under the laws of the State of New York, to develop and maintain a transportation network.

¹ The relevant paragraph of page 2 of the November 22nd order states:

On or before January 12, 2018, the parties shall file a Joint Set of Stipulated Facts, Exhibits and Testimony. The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate as much as possible to matters which cannot reasonably be contested so that the hearing can be concise and focused solely on those matters that can only be resolved after an evidentiary hearing.

3. As part of its responsibilities, Respondent operates and maintains a statewide network of Municipal Separate Storm Sewer Systems ("MS4s") located in urbanized areas throughout New York.
4. Throughout the State, Respondent's small MS4s contain approximately 16,800 outfalls.
5. On March 10, 2003, Respondent submitted a Notice of Intent ("NOI") to be covered under New York's 2003 MS4 General Permit ("GP").
6. Respondent's coverage continued under that permit until the New York State Department of Environmental Conservation ("NYSDEC") issued the 2008 MS4 GP, on May 1, 2008, at which time Respondent's coverage continued under that permit.
7. When the 2008 MS4 GP expired, on April 30, 2010, the NYSDEC issued the 2010 MS4 GP, on May 1, 2010, and Respondent's coverage continued thereafter under that permit.
8. The 2010 MS4 GP, which was in effect during the EPA's audits of Respondent's MS4s, expired on April 30, 2015.
9. On May 1, 2015, the DEC issued the current permit ("2015 MS4 GP"), which expired on April 30, 2017, and has been administratively extended, and therefore remains in effect.
10. Respondent's coverage continues under the 2015 MS4 GP.
11. Pursuant to those permits, Respondent developed a Stormwater Management Program and a Stormwater Management Program Plan for use by all of its MS4s around New York State.
12. Respondent published a SWMP Plan in May 2012.
13. On June 19-21, 2012, the EPA conducted a compliance audit of Respondent's MS4 in NYSDOT Region 9.
14. On November 27-29, 2012, the EPA conducted a compliance audit of Respondent's MS4 in NYSDOT Region 8.
15. On June 25-27, 2013, the EPA conducted a compliance audit of Respondent's MS4 in NYSDOT Region 5.
16. On March 5, 2014, based on its observations at the above three compliance audits, the EPA issued an Administrative Compliance Order to Respondent alleging violations of Respondent's MS4 permit and ordering Respondent to correct those violations. That order was reissued on June 5, 2014 with extended timelines for completing several of the ordered corrections.
17. Between April 15, 2014 and February 5, 2016, Respondent took numerous corrective actions,

and made numerous submissions to the EPA, to achieve compliance with its MS4 permit.

18. In January 2016, Respondent published a revised SWMP Plan, and submitted it to the EPA on January 29, 2016.

II. Stipulated Exhibits

The parties hereby agree and accept the numbering system used below to identify the exhibits listed below. The parties additionally agree and accept that each party waives any objection pursuant to 40 C.F.R. §§ 22.22 and 22.23 to the admissibility of such exhibits into the record of the hearing to be held in this proceeding, and each party further consents to the admission of the exhibits listed below into the record of such hearing:²

Complainant's Exhibit 1: April 3, 2003 Notice of Intent filed by the New York State Department of Transportation ("NYSDOT") for coverage under SPDES Permit No. GF-02-02.

Complainant's Exhibit 2: New York State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems, GP-02-02.

Complainant's Exhibit 3: New York SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s), GP-08-002.

Complainant's Exhibit 4: New York SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems, GP-0-10-002.

Complainant's Exhibit 5: New York SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems, GP-0-15-003.

Complainant's Exhibit 6: New York SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems, GP-0-15-003, revised January 2016.

Complainant's Exhibit 8: May 18, 2012 Letter from the EPA to NYSDOT notifying NYSDOT about the upcoming audit in Region 9.

Complainant's Exhibit 9: MS4 Pre-audit records request included with the May 18, 2012 notice letter.

Complainant's Exhibit 10: Tentative audit agenda included with the May 18, 2012 notice letter.

Complainant's Exhibit 11: May 30, 2012 Letter from NYSDOT to the EPA confirming the Region 9 audit.

² The parties' consenting to the admissibility of such documents is not intended and is not to be construed as an admission by either party of the contents thereof, nor a waiver of any objection regarding the appropriate weight to be given any such document(s).

Complainant's Exhibit 13: June 7, 2012 Table tracking NYSDOT Region 9's response to the EPA records request.

Complainant's Exhibit 14: February 2, 2010 Sign-in sheet for NYSDOT's erosion and sediment control training.

Complainant's Exhibit 15: February 18, 2010 NYSDOT presentation entitled "SPDES in Construction GP 0-10-001."

Complainant's Exhibit 16: June 2003 Memorandum of Understanding between NYSDOT and NYSDEC regarding the SPDES General Permit for Stormwater Discharges from Construction Activity, GP-02-01.

Complainant's Exhibit 17: June 3, 2010 Letter from NYSDEC to NYSDOT authorizing the use of "Chito Van" for the treatment of stormwater runoff.

Complainant's Exhibit 22: Notes from the June 14, 2012 NYSDOT Environmental Program Support Issues Meeting.

Complainant's Exhibit 23: Map of NYSDOT Region 9 post-construction Stormwater Management Plans (SMPs) in the Binghamton MS4.

Complainant's Exhibit 24: NYSDOT Map entitled "NYSDOT Region 9 MS4 Compliance Audit."

Complainant's Exhibit 25: NYSDOT Presentation entitled "Region 9 Lessons Learned."

Complainant's Exhibit 26: November 20, 2008 NYSDOT drawings of stormwater treatment plan along Route 17 in Parksville.

Complainant's Exhibit 27: June 21, 2012 NYSDOT internal email regarding record keeping for stormwater complaints and remediation.

Complainant's Exhibit 30: January 30, 2013 NYSDOT Region 9 MS4 audit report appendices and attachments.

Complainant's Exhibit 31: October 17, 2012 Letter from the EPA to the NYSDOT notifying the NYSDOT about the upcoming audit in Region 8.

Complainant's Exhibit 32: Tentative agenda for NYSDOT Region 8 MS4 audit included with the October 17, 2012 notice letter.

Complainant's Exhibit 33: MS4 Pre-audit records request included with the October 17, 2012 notice letter.

Complainant's Exhibit 34: November 14, 2012 table tracking NYSDOT Region 8 response to the EPA records request.

Complainant's Exhibit 35: January 29, 2013 NYSDOT Region 8 MS4 audit report and appendices.

Complainant's Exhibit 36: May 22, 2013 Letter from the EPA to the NYSDOT notifying the NYSDOT about the upcoming audit in Region 5.

Complainant's Exhibit 37: MS4 Pre-audit records request included with the May 22, 2013 notice letter.

Complainant's Exhibit 39: December 17, 2013 NYSDOT Region 5 MS4 audit report appendices and attachments.

Complainant's Exhibit 40: March 5, 2014 EPA Administrative Compliance Order (ACO) to NYSDOT, CWA-02-2014-3028.

Complainant's Exhibit 41: March 21, 2014 Letter from NYSDOT to the EPA requesting an extension of time to comply with the March 5 ACO.

Complainant's Exhibit 42: March 24, 2014 Letter from the EPA granting the NYSDOT's extension request for complying with the March 5 ACO.

Complainant's Exhibit 44: January 26, 2015 Letter from NYSDEC requesting a meeting with NYSDOT and the EPA.

Complainant's Exhibit 45: June 30, 2014 Email from Arvizu to Bass regarding clarification on the NYSDOT's July 1, 2014 submittal.

Complainant's Exhibit 47: June 5, 2014 EPA Administrative Compliance Order CWA-02-2014-3041 and related correspondence.

Complainant's Exhibits 48-59: Various submissions by NYSDOT to the EPA relating to compliance with ACO CWA-02-2014-3041.

Complainant's Exhibits 60-63: June 15, 2016 EPA Administrative Complaint, CWA-02-2016-3403, proof of service, and public notice.

Complainant's Exhibit 64: February 2, 2017 NYSDOT answer to the Administrative Complaint.

Complainant's Exhibit 65: 1995 EPA Interim Clean Water Act Settlement Penalty Policy.

Complainant's Exhibit 66: 2016 EPA Final Signed Penalty Inflation Guidance.

Complainant's Exhibit 69: DEC Final Designation Criteria for MS4s.

Complainant's Exhibit 72: NYSDOT Webpage - About NYSDOT-History-Past and Present – last viewed July 27, 2017.

Complainant's Exhibit 73: April 18, 2014 NYSDOT Acknowledgment and Comments on CWA-02-2014-3028.

Complainant's Exhibit 74: 2013-01-24 - Email from Hahn to Arvizu re NYSDOT Region 8 report.

Complainant's Exhibit 75: 2013-01-24 - Email from Arvizu to Hahn re NYSDOT Region 8 report.

Complainant's Exhibit 76: 2017-07-21 - Email from McNally to Saporita re EPA NYSDOT MS4 Penalty.

Respondent's Exhibit 1. Undated – New York State Department of Transportation Printed Public Education Materials - Rest Area Poster.

Respondent's Exhibit 4. June 2011 – Environmental Handbook for Transportation Operations.

Respondent's Exhibit 5. October 14, 2011 – New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s), Permit No. GP-0-10-002.

Respondent's Exhibit 7. January 29, 2013 – Municipal Separate Storm Sewer System (MS4) Compliance Audit, New York State Department of Transportation Region 8, Audit Report.

Respondent's Exhibit 8. January 30, 2013 – Municipal Separate Storm Sewer System (MS4) Compliance Audit, New York State Department of Transportation Region 9, Audit Report.

Respondent's Exhibit 9. March 2013 – New York State Department of Transportation Stormwater Management Program Plan (SWMP Plan).

Respondent's Exhibit 11. December 17, 2013 – Municipal Separate Storm Sewer System (MS4) Compliance Audit, New York State Department of Transportation Region 5, Audit Report.

Respondent's Exhibit 12. March 5, 2014 – Administrative Compliance Order with United States Environmental Protection Agency correspondence.

Respondent's Exhibit 13. March 12, 2014 – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 14. March 24, 2014 – Correspondence from United States Environmental Protection Agency to New York State Department of Transportation.

Respondent's Exhibit 15. April 16, 2014 – United States Environmental Protection Agency Municipal Separate Storm Sewer System (MS4) Administrative Order Comments email with attachment.

Respondent's Exhibit 17. May 15, 2014 – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 18. June 5, 2014 – Administrative Compliance Order with United States Environmental Protection Agency correspondence.

Respondent's Exhibit 19. June 12, 2014 – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 20. June 24, 2014 – State Highway As-built Record Plans (SHARP): New York State Department of Transportation As-Built Record Plans Search Tool, Applications in Stormwater System Tracking Power Point presentation.

Respondent's Exhibit 21. June 30, 2014 – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 22. July 1, 2014 – New York State Department of Transportation Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3028, Ordered Provisions due July 1, 2014.

Respondent's Exhibit 24. September 2, 2014 – New York State Department of Transportation Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3028, Ordered Provisions due September 1, 2014.

Respondent's Exhibit 25. September 2, 2014 – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 26. September 16, 2014 – United States Environmental Protection Agency correspondence.

Respondent's Exhibit 27. September 18, 2014 – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 28. September 22, 2014 at 8:43am – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 29. September 22, 2014 at 10:43am – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 31. October 31, 2014 – New York State Department of Transportation Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3028, Ordered Provisions due October 31, 2014.

Respondent's Exhibit 32. November 3, 2014 – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 33. December 8, 2014 – Correspondence from United States Environmental Protection Agency to New York State Department of Transportation.

Respondent's Exhibit 34. December 9, 2014 – Email between New York State Department of Transportation and United States Environmental Protection Agency.

Respondent's Exhibit 36. December 31, 2014 at 9:49am – Email between United States Environmental Protection Agency and New York State Department of Transportation (NYSDOT) with NYSDOT Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3028, Ordered Provisions due January 1, 2015.

Respondent's Exhibit 37. December 31, 2014 at 1:24pm – Email and correspondence between New York State Department of Transportation and New York State Department of Environmental Conservation.

Respondent's Exhibit 38. February 10, 2015 – Correspondence from United States Environmental Protection Agency to New York State Department of Transportation.

Respondent's Exhibit 40. April 1, 2015 – New York State Department of Transportation Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3028, Ordered Provisions due April 1, 2015.

Respondent's Exhibit 41. April 30, 2015 – Email and New York State Department of Transportation Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3028, Ordered Provisions due April 30, 2015.

Respondent's Exhibit 42. May 19, 2015 – Correspondence from United States Environmental Protection Agency to New York State Department of Transportation.

Respondent's Exhibit 43. June 18, 2015 – Correspondence from United States Environmental Protection Agency to New York State Department of Transportation.

Respondent's Exhibit 45. June 30, 2015 – New York State Department of Transportation Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3028, Ordered Provisions due June 30, 2015.

Respondent's Exhibit 46. July 2, 2015 – Email between New York State Department of Transportation and United States Environmental Protection Agency.

Respondent's Exhibit 47. July 7, 2015 – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 49. August 14, 2015 – New York State Department of Transportation Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3041, Ordered Provisions due August 14, 2015.

Respondent's Exhibit 50. August 17, 2015 – Correspondence from United States Environmental Protection Agency to New York State Department of Transportation.

Respondent's Exhibit 52. September 10, 2015 – Correspondence from United States Environmental Protection Agency to New York State Department of Transportation.

Respondent's Exhibit 53. September 10, 2015 – New York State Department of Transportation Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3041, August 17, 2015.

Respondent's Exhibit 54. September 18, 2015 – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 56. September 30, 2015 – Email between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 57. September 30, 2015 – New York State Department of Transportation Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3041, Ordered Provisions due September 30, 2015.

Respondent's Exhibit 59. November 10, 2015 – Correspondence from United States Environmental Protection Agency to New York State Department of Transportation.

Respondent's Exhibit 60. November 24, 2015 – New York State Department of Transportation Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3041, Ordered Provisions due November 30, 2015.

Respondent's Exhibit 61. December 22, 2015 – Email and correspondence between United States Environmental Protection Agency and New York State Department of Transportation.

Respondent's Exhibit 62. January 29, 2016 – New York State Department of Transportation Progress Report to satisfy Administrative Compliance Order CWA – 02-2014-3041, Ordered Provisions due January 29, 2016.

Respondent's Exhibit 63. January 29, 2016 – United States Environmental Protection Agency Administrative Compliance Order CWA-02-2014-3041 – Compliance Schedule and Status.

Respondent's Exhibit 64. June 15, 2016 – United States Environmental Protection Agency correspondence with Administrative Complaint.

Respondent's Exhibit 66. July 11, 2016 – Correspondence from New York State Department of Transportation to United States Environmental Protection Agency.

Respondent's Exhibit 67. July 14, 2016 – Respondent's Answer to Administrative Complaint.

Respondent's Exhibit 70. December 1, 2016 – Correspondence from New York State Department of Transportation to United States Environmental Protection Agency.

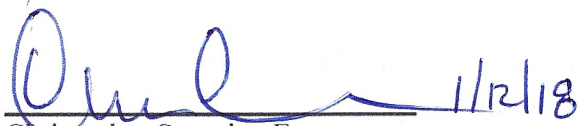
Respondent's Exhibit 71. February 2, 2017 – Correspondence from New York State Department of Transportation with Respondent's Answer.

Respondent's Exhibit. 72. Personal Services Detail Report.

III. Stipulated Testimony

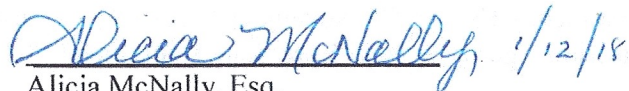
The parties hereby agree and accept that the anticipated testimony of their respective witnesses will cover the matters as set forth in their respective prehearing exchanges. The parties agree and accept that the paragraphs from their respective prehearing exchanges listing their witnesses are hereby incorporated by reference into these Joint Stipulations with the same force and effect as if set forth in full.

FOR COMPLAINANT:

Handwritten signature of Christopher Saporita in blue ink, dated 1/12/18.

Christopher Saporita, Esq.
Jason P. Garelick, Esq.
Counsel for Complainant
United States Environmental Protection
Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

FOR RESPONDENT:

Handwritten signature of Alicia McNally in blue ink, dated 1/12/18.

Alicia McNally, Esq.
Counsel for Respondents
Division of Legal Affairs
New York State Department
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50 Wolf Road, 6th Floor
Albany, NY 12232

In the Matter of *New York State Department of Transportation*, Respondent.
Docket No. CWA-02-2016-3403

CERTIFICATION OF SERVICE

I hereby certify that the foregoing Joint Stipulations, dated January 12, 2018, was sent this day to the following parties in the manner indicated below.



Lynn Khoury, Secretary

Original by OALJ E-Filing System to:

Mary Angeles
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges

Copy by Regular Mail to:

Alicia McNally, Esq.
Assistant Counsel
Division of Legal Affairs
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, NY 12232
For Respondent

Dated: January 12, 2018
New York, NY