



THE COUNCIL OF THE CITY OF BINGHAMTON
STATE OF NEW YORK

Date: May 4, 2016

Sponsored by Council Members: Mihalko, Matzo, Papastrat, Cronce, Taylor

Introduced by Committee: Municipal Public Affairs

RESOLUTION

entitled

A RESOLUTION AUTHORIZING THE MAYOR
TO ENTER INTO THE 2ND MODIFICATION
CONSENT ORDER WITH THE NYSDEC FOR
THE BINGHAMTON-JOHNSON CITY JOINT
SEWAGE TREATMENT FACILITIES

WHEREAS, the City of Binghamton and the Village of Johnson City are joint owners of the Binghamton-Johnson City Joint Sewage Treatment Facilities ("BJCJSTF"); and

WHEREAS, on May 15, 2011, the BJCJSTF suffered a wall failure at the BAF C-Cell Complex; and

WHEREAS, on September 7 and 8, 2011, the Susquehanna River flooded, causing significant damage to the BJCJSTF, which forced the BJCJSTF to either bypass completely or to provide only primary treatment plus disinfection; and

WHEREAS, the above-mentioned incidents have resulted in violations of Article 17 of the New York State Department of Environmental Conservation Law, and of Title 16 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Parts 703 and 750; and

WHEREAS, the Council of the City of Binghamton has previously approved Consent Orders with the Department of Environmental Conservation to remedy said violations; and

WHEREAS, the City of Binghamton wishes to adopt a Second Modification Consent Order as annexed hereto.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby:

RESOLVE that the Mayor of the City of Binghamton is hereby authorized to enter into a Second Modification Consent Order with the New York State Department of Environmental Conservation, as annexed hereto and approved as to form and content by the Office of Corporation Counsel.

Introductory No. R16-60

Permanent No. R16-60

Sponsored by City Council Members:
Mihaliko, Matzo, Papastrat, Cronce, Taylor

**A RESOLUTION AUTHORIZING THE MAYOR TO
ENTER INTO THE 2ND MODIFICATION CONSENT
ORDER WITH NYSDEC FOR THE
BINGHAMTON-JOHNSON CITY JOINT SEWAGE
TREATMENT FACILITIES**

The within Resolution was adopted by the Council of
the City of Binghamton.

Date 5/4/16

City Clerk Leigh Ann L. May

Date Presented to Mayor 5/5/16

Date Approved 5/5/16

Mayor Michael J. Dowd



	Ayes	Nays	Abstain	Absent
Councilman Scaringi	✓			
Councilman Mihaliko	✓			
Councilwoman Cronce	✓			
Councilman Taylor	✓			
Councilman Matzo	✓			
Councilman Papastrat	✓			
Total	6	0	0	0

Code of the City of Binghamton

Adopted Defeated

6 Ayes 0 Nays 0 Abstain 0 Absent

I hereby certify the above to be a true copy of the legislation adopted by the Council of the City of Binghamton at a meeting held on 5/4/16. Approved by the Mayor on 5/5/16.

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of Violations of Article 17 of the New York State
Environmental Conservation Law and of Title 6 of the Official
Compilation of Codes, Rules, and Regulations of the State of New
York, Parts 703 and 750, by

SECOND
MODIFICATION
CONSENT
ORDER

CITY OF BINGHAMTON,
VILLAGE OF JOHNSON CITY, and
BINGHAMTON-JOHNSON CITY JOINT SEWAGE
BOARD
Vestal (T)
Broome County, New York,

CASE NO.
R7-20110628-59

Respondents

-----X
1. The New York State Department of Environmental Conservation (“the
Department”) is responsible for the administration and enforcement of Article 17 of the New
York State Environmental Conservation Law (“ECL”) and of Title 6 of the Official Compilation
of Codes, Rules, and Regulations of the State of New York (“6 NYCRR”) Parts 703 and 750,
promulgated pursuant thereto.

2. The City of Binghamton (“Respondent Binghamton”) is a municipal corporation
organized and existing under the laws of the State of New York and is located in Broome
County, New York.

3. The Village of Johnson City (“Respondent Johnson City”) is a municipal
corporation organized and existing under the laws of the State of New York and is located in
Broome County, New York.

4. Respondent Binghamton and Respondent Johnson City jointly own the Binghamton-Johnson City Joint Sewage Treatment Plant (“the Facility”) located on Old Vestal Road in the Town of Vestal, Broome County, New York.

5. The Binghamton-Johnson City Joint Sewage Board (“Respondent Board”) is a joint agency of and for Respondent Binghamton and Respondent Johnson City and is the operator and manager of the Facility. The Department issued SPDES Permit Number NY0024414 to Respondent Board with respect to the Facility (the “SPDES permit.”). Respondent Binghamton and Respondent Johnson City were added as co-permittees to the SPDES permit on March 6, 2008.

6. Respondent Johnson City has been issued SPDES Permit Number NY0023981 governing combined sewer overflows in the Village’s sewer collection system. Respondent Binghamton has been issued SPDES Permit Number NY0024406 governing combined sewer overflows in the City’s sewer collection system. These two permits, in conjunction with the Binghamton-Johnson City SPDES permit, require that the Facility must be capable of receiving and treating a minimum of 60 million gallons per day (“MGD”) through the plant headworks and that Respondents’ collection systems must be capable of delivering a minimum of 60 MGD to the Facility.

7. On January 9, 2012, the Department and the Respondents entered into an administrative consent order under the authority of ECL Article 17, to provide for rebuilding the Facility after a portion of the Facility collapsed in May 2011 and the remainder of the Facility was flooded by the Susquehanna River in September 2011 (“2012 Consent Order”). The 2012 Consent Order was modified by letters of modification issued by the Department’s Region 7

Regional Director on May 13, 2013, and June 10, 2013, and by a Modification Consent Order executed on July 30, 2014 (“2014 Modification Order”). In addition, workplan approval letters clarifying and refining process due dates were issued on November 10, 2014, and March 10, 2015.

8. In accordance with the previous orders, Respondents have continued to work toward repairing the Facility and returning it to full operation. Since February 2013, the Facility has operated in Chemically Enhanced Primary Treatment (“CEPT”) mode, which is an interim treatment measure to improve the quality of effluent while long-term rehabilitation of the plant progresses.

9. During the process of modifying the facility design after the 2014 Modification Order, Respondents have determined that they cannot meet the required due dates and have requested extension of such dates.

10. Respondents have failed to meet four compliance due dates under the previous orders, to wit: to submit engineering design documents for the Biological Aerated Filters (BAFs) and associated processes by July 17, 2015; to bid construction contracts for such designs by August 12, 2015; to commence construction of such designs by October 7, 2015; and to submit a final report of the BioStyr Pilot Study by July 28, 2015.

11. The Department and the Respondents are entering into this Second Modification Consent Order to modify the terms of the previous Orders in this matter, so as to resolve the violations and to update the Schedule of Compliance and other terms of the previous Orders.

12. The extension of compliance due dates is not given without serious consideration. Interim operation of the Facility in its current condition is causing substantial impairment of

water quality in the Susquehanna River, a Class A surface water. Failure of the Facility to meet its final SPDES permit limits by 2017 may result in the State of New York's failure to comply with its Chesapeake Bay Watershed Implementation Plan and, thus, with federal Chesapeake Bay total maximum daily load ("TMDL") standards. For these reasons, Respondents were only permitted to modify the Facility's design in 2014 on the condition that such redesign would still bring the Facility into compliance with its final SPDES permit limits by the August 2017 due date imposed by the 2012 Consent Order.

13. On balance, the long-term benefits of the proposed redesign outweigh the continuing short-term impacts. To the extent possible, phasing of construction and maximization of interim operating practices will be required in an attempt to reduce the impacts to water quality, and payable stipulated penalties are incorporated herein to provide incentives to expedite Facility rehabilitation to the maximum extent possible. The Department has also reserved its right to address natural resource damages resulting from the Facility's discharge.

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

I. Compliance. Respondents shall comply with the provisions, terms, and conditions set forth in this Second Modification Order. Respondents' failure to comply with any provision of this Order shall constitute a default and a violation of this Order and, upon such default and violation, the Department's right to pursue all claims and remedies administratively, at law, or in equity shall not be affected by anything contained in this Order.

II. Schedule for Compliance. Respondents shall fully comply with the Schedule for Compliance set forth as Appendix A to this Second Modification Order.

A. Within 7 days after each due date or milestone described in Appendix A, Respondents shall submit to the Department a written certification of compliance or non-compliance with respect to that requirement. Such certifications shall be in the general format provided at Appendix A-1 hereto.

B. Such certifications shall be jointly executed by either a principal or executive officer or ranking elected official of each of the Respondents, unless a duly authorized representative is appointed by all three Respondents to execute such certifications and written authorization of such appointment is submitted to Department staff.

III. Interim Effluent Limits. Appendix B to this Second Modification Order sets forth the interim effluent limitations and monitoring requirements for the Facility and supersedes Schedule B to the 2014 Modification Consent Order.

A. Schedule B-1. From the effective date of this Order through September 30, 2018, the interim effluent limitations and monitoring requirements set forth in Schedule B-1 to this Second Modification Order shall govern discharges from the Facility.

B. Schedule B-2. From October 1, 2018, through April 30, 2019, the interim effluent limitations and monitoring requirements set forth in Schedule B-2 to this Second Modification Order shall govern discharges from the Facility.

C. Schedules B-3. During that portion of construction beginning with Subparagraph 3.c and ending with Subparagraph 3.k of the Schedule for Compliance at Appendix A hereof, the Interim Conditions set forth in Schedule B-3 to this Second Modification

Order shall govern combined sewer overflows from the City of Binghamton's sewer collection system.

IV. Payable Stipulated Penalties. In addition to the penalties set forth in Paragraph IV of the 2012 Consent Order, beginning on January 1, 2018, Respondents shall be liable for a payable stipulated penalty of \$5,000 per month for each month that the Facility exceeds the monthly average mass loading effluent limit for carbonaceous biochemical oxygen demand ("cBOD₅") of 5,254 pounds per day or for total suspended solids ("TSS") of 5,838 pounds per day ("the SPDES permit effluent limits"), and the Department shall have judgment therefor.

A. Payment of such stipulated penalties shall be made to the Department at its Region 7 Headquarters, 615 Erie Boulevard West, Syracuse, New York 13204, to the attention of the Office of General Counsel, as follows:

1. On or before March 15, 2018, Respondents shall pay \$5,000 if the Facility exceeded either or both of the SPDES permit effluent limits for calendar month January 2018.

2. Similarly, for each subsequent calendar month for which the Facility exceeds either or both of the SPDES permit effluent limits, Respondents shall pay \$5,000.00 within 45 days after the end of that calendar month.

B. Such penalty payments shall be categorized as payments made for violations of ECL 11-0503.1, for the discharge of deleterious substances into the Susquehanna River in quantities injurious to fish life and injurious to the propagation of fish, and shall, therefore, be processed into the New York State Conservation Fund.

C. Default of Payment. The penalties assessed in this Order constitute a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in this Order may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest and a charge to cover the cost of collecting the debt) or referral to the New York State Department of Taxation and Finance, which may offset by the unpaid penalty amount any monies that may be owed to Respondents by the State of New York.

V. Previous Orders. All provisions, terms, and conditions of the 2012 Consent Order; the letters of modification dated May 13, 2013, and June 10, 2013; the 2014 Modification Order; and all Department approval letters previously issued shall remain in full force and effect except as expressly modified by this Second Modification Consent Order.

VI. Affected Resources. The Department's reservation of rights concerning natural resource damages contained at Paragraph XIV of the 2012 Consent Order is hereby renewed and is expressly understood to apply to impacts from the Facility's continuing inability to meet its SPDES permit limits, whether or not the Facility is in compliance with this Order and associated Interim Operating Limits.

VII. Effective Date. The effective date of this Order shall be the date it is signed by the Commissioner or the Commissioner's designee.

Dated: SYRACUSE, NEW YORK
_____, 2016

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Basil Seggos, Acting Commissioner

BY _____
JOSEPH SLUZAR
Acting Regional Director, Region 7

CONSENT BY RESPONDENT

Respondent **City of Binghamton** hereby consents to the issuing and entering of this Order without further notice, waives the right to notice and hearing herein, and agrees to be bound by the provisions, terms, and conditions contained herein.

CITY OF BINGHAMTON, by:

Signature _____

Printed Name _____

Title _____

Date _____

STATE OF NEW YORK)

: ss.:

COUNTY OF _____)

On the ____ day of _____ in the year 2016, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that (he)(she) executed the same in (her)(his) capacity as _____ of the **City of Binghamton**, and that by (her)(his) signature on the instrument, the municipal corporation upon behalf of which the individual acted executed the instrument.

NOTARY PUBLIC

CONSENT BY RESPONDENT

Respondent **Village of Johnson City** hereby consents to the issuing and entering of this Order without further notice, waives the right to notice and hearing herein, and agrees to be bound by the provisions, terms, and conditions contained herein.

VILLAGE OF JOHNSON CITY, by:

Signature _____

Printed Name _____

Title _____

Date _____

STATE OF NEW YORK)

: ss.:

COUNTY OF _____)

On the ____ day of _____ in the year 2016, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that (he)(she) executed the same in (her)(his) capacity as _____ of the **Village of Johnson City**, and that by (her)(his) signature on the instrument, the municipal corporation upon behalf of which the individual acted executed the instrument.

NOTARY PUBLIC

Appendix A
Schedule for Compliance

1. Coordination and Public Outreach:

- a. Within 30 days after the effective date of this Second Modification Order, Respondents shall implement a public outreach plan whereby Respondents shall keep the public informed about operations at the Facility and the status of the rehabilitation. At a minimum, such plan shall include a website which provides such information and updates in a timely manner and provides a mechanism for the public to make inquiries about the Facility. The plan shall provide for publicizing the availability of such information and for making the quarterly reports discussed in Subparagraph 1.c, below, available to the public in a timely manner. The public outreach plan shall be designed and implemented to the satisfaction of Department staff and shall be updated on a continuing and timely basis until the Facility's rehabilitation is complete.
- b. Commencing upon execution of this Second Modification Order, Respondents shall conduct quarterly meetings attended by representatives of each Respondent and by Department staff. Such quarterly meetings are necessary to keep each Respondent and Department staff apprised of the status of the Facility's rehabilitation, given the complex nature of the work and the difficulty of maintaining communication among involved parties.
- c. Respondents shall also submit quarterly reports summarizing Facility operations and the status of rehabilitation. Such reports shall be submitted for Department approval by the 15th day after the end of each preceding quarter, with the first such report to be submitted on January 15, 2016, for the fourth quarter of 2015. Upon Department acceptance of each quarterly report, Respondents shall provide the report to the public in accordance with Subparagraph 1.a, above.

2. Interim Emergency Operations Plan: Respondents developed and implemented an Interim Emergency Operations Plan in accordance with the 2014 Modification Order, to provide for operation of the Facility during emergency events such as the 2011 Flood of Record. By September 30, 2017, Respondents shall update the approved Interim Emergency Operations Plan by submitting the proposed modifications for Department review and approval and implementing such modifications as approved.

3. Repair of Facility:

- a. By January 8, 2016, Respondents shall submit to the Department, for review and approval, proposed engineering design documents for the BAFs, backwash tank, backwash treatment system, headworks modifications, permanent CEPT system, modifications to the primary clarifiers, ultraviolet disinfection system, and sludge thickeners.
- b. By January 8, 2016, Respondents shall bid the construction contracts for the BAFs, backwash tank, backwash treatment system, headworks modifications, permanent CEPT

system, modifications to the primary clarifiers, ultraviolet disinfection system, and sludge thickeners.

- c. By May 27, 2016, Respondents shall issue Notice(s) to Proceed to commence construction of the BAFs, backwash waste tank, backwash treatment system, headworks modifications, permanent CEPT system, modifications to the primary clarifiers, ultraviolet disinfection system, and sludge thickeners (“BAF Restoration, Contracts 5, 6, 7, and 8”), in accordance with the approved engineering design documents.
- d. By November 30, 2016, Respondents shall complete construction of the secant wall for the backwash waste tank, in accordance with the approved engineering design documents.
- e. By September 18, 2017, Respondents shall complete construction of the new backwash waste treatment system, in accordance with the approved engineering design documents.
- f. By November 1, 2017, Respondents shall complete construction and start-up of the Secondary Influent Pump Station, in accordance with the approved engineering design documents.
- g. By November 1, 2017, Respondents shall complete construction and start-up of the plant headworks, including the new bar screens and grit removal system, in accordance with the approved engineering design documents.
- h. By December 1, 2017, Respondents shall complete construction and hydraulic testing of the new backwash waste tank, in accordance with the approved engineering design documents.
- i. By December 31, 2017, Respondents shall complete construction and start-up for all construction work related to primary clarifiers 7 through 10, in accordance with the approved engineering design documents.
- j. By February 1, 2018, Respondents shall complete construction and retrofit work on all sludge thickeners, in accordance with the approved engineering design documents.
- k. By June 1, 2018, Respondents shall complete construction and start-up of carbon/nitrogen (“C/N”) BAFs 1 through 8 and of all de-nitrification (“DN”) BAFs, in accordance with the approved engineering design documents.
- l. By August 1, 2018, Respondents shall commence operation of BAF C/N cells 1 through 8, all four BAF DN cells, the backwash waste tank, backwash treatment system, headworks modifications, primary clarifier modifications, permanent CEPT system, ultraviolet disinfection system, sludge thickeners, and all related appurtenances in accordance with the approved engineering design documents.
- m. By March 1, 2019, Respondents shall substantially complete construction of BAF C/N cells 9 through 14 in accordance with the approved engineering design documents.
- n. By May 1, 2019, Respondents shall operate the Facility in compliance with its SPDES permit effluent limits.

4. Anaerobic Digesters:

- a. By April 29, 2016, Respondents shall submit for Department approval a Final Engineering Report on the repair and restoration of Anaerobic Digesters 1 through 3. Such Report shall include a proposed schedule of construction which provides for substantial completion by April 15, 2018.
- b. By February 10, 2017, Respondents shall submit for Department approval final engineering plans and specifications on the repair and restoration of Anaerobic Digesters 1 through 3, in accordance with the Final Engineer Report as approved.
- c. By May 1, 2017, Respondents shall issue a Notice to Proceed for the repair and restoration of Anaerobic Digesters 1 through 3.
- d. By April 15, 2018, Respondents shall achieve substantial completion of the repair and restoration of Anaerobic Digesters 1 through 3, in accordance with the approved Final Engineering Report and schedule and the final engineering plans and specifications.
- e. By June 1, 2018, Respondents shall commence operation of Anaerobic Digesters 1 through 3.

5. Interim Operating Strategy:

- a. Respondents developed and implemented their interim operating strategy for the Facility under the 2014 Modification Order, which strategy outlines how the existing plant will operate during both normal flow conditions and wet weather conditions until plant repairs are completed and how each of the Facility's component processes will be phased back into operation.
- b. By July 1, 2018, and by April 1, 2019, Respondents shall modify the approved strategy to provide for operation of the new processes coming online by August 1, 2018, and May 1, 2019, respectively, by submitting the proposed modification for Department review and approval and operating the Facility in accordance with each approved modification.
- c. Respondents shall continue operating the Facility in accordance with the approved Interim Operating Strategy currently in effect until a new strategy is approved under this paragraph.

6. Cost Analysis: By April 26, 2016, Respondents shall submit an addendum to the Plant Restoration and Rehabilitation Engineering Report dated December 2014 and revised March 13, 2015, as approved by letter dated March 26, 2015. Such addendum shall set forth the capital cost, annual costs (including debt, operation and maintenance), and anticipated annual sewer use fees associated with the project.

7. Flood Mitigation: By May 16, 2016, Respondents shall submit an updated Flood Protection Engineering Report which provides for completion of construction on Phase I, construction of the flood wall to elevation 845 from the east side of the Facility to the northeast corner of Chlorine Contact Tank 1, by July 10, 2017; and for completion of construction on Phase II, completion of

the flood wall and flood protection system to elevation 845 for the entire Facility, by December 31, 2017.

8. Toxicity Testing Requirement: The toxicity testing requirement scheduled to commence under the SPDES Permit in calendar year 2012 is suspended until the Facility returns to full operation and is able meet its permit limits.

Appendix A-1:
Certification of Compliance or Non-Compliance
Binghamton-Johnson City Joint Sewage Treatment Plant
DEC Case No. R7-20110628-59, Second Modification Consent Order

Description of compliance due date or milestone: _____

Relevant section of App. A, Schedule for Compliance: _____ Due Date for compliance: _____

1. Respondents have/have not [circle one] completed the specified compliance schedule activity by the relevant due date.
2. I am authorized as either a principal or executive officer or ranking elected official of one of the three Respondents to file this certification on behalf of the facility.
3. Submission of this certification does not limit enforcement or re-inspection by the Department.

Please check items attached as documentation of completion	Description of compliance actions (Attach extra sheets as necessary)	DEC Use Only: Received date
Photos <input type="checkbox"/>		
Engineer's Certification <input type="checkbox"/>		
Other <input type="checkbox"/>		

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 gathered and evaluated 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.

 Name of Representative, City of Binghamton [Print or Type] _____
Title

 Signature _____
Date Signed

 Name of Representative, Village of Johnson City [Print or Type] _____
Title

 Signature _____
Date Signed

 Name of Representative, Joint Sewage Board [Print or Type] _____
Title

 Signature _____
Date Signed

Appendix B: Interim Effluent Limits

Schedule B-1:

INTERIM PERMIT LIMITS, LEVELS AND MONITORING – SPDES No. NY 002-4414

OUTFALL No.	LIMITATIONS APPLY:	RECEIVING WATER	EFFECTIVE	EXPIRING
001	Year Round	Susquehanna River	Effective date of modified order	September 30, 2018

PARAMETER	EFFLUENT LIMIT					MONITORING REQUIREMENTS				FN
	Type	Limit	Units	Limit	Units	Sample Frequency	Sample Type	Location		
								Inf.	Eff.	
Flow	Monthly average			Monitor	mgd	Continuous	Recorder	X		
cBOD ₅	Monthly average	Monitor	mg/l	21,600	lbs/d	Daily	24-hr comp	X	X	1
cBOD ₅	7-Day average	Monitor	mg/l	Monitor	lbs/d	Daily	24-hr comp	X	X	
Solids, Total Suspended	Monthly Average	Monitor	mg/l	11,100	lbs/d	Daily	24-hr comp	X	X	1
Solids, Total Suspended	7-Day average	Monitor	mg/l	Monitor	lbs/d	Daily	24-hr comp	X	X	
Settleable Solids	Daily Maximum	Monitor	ml/l			6/day	Grab	X	X	
Nitrogen, Ammonia (as N)	Monthly average	Monitor	mg/l	Monitor	lbs/d	Daily	24-hr comp	X	X	
Nitrogen, TKN	Monthly average	Monitor	mg/l	Monitor	lbs/d	1/week	24-hr comp	X	X	
Total Nitrogen (as N)	Monthly average	Monitor	mg/l	Monitor	lbs/d	Daily	24-hr comp	X	X	
Iron, Total Recoverable	Monthly Average	Monitor	mg/l	1,300	lbs/d	Monthly	24-hr comp		X	
Total Chlorine Residual	Daily Maximum	2.0	mg/l			6/day	Grab		X	

FOOTNOTES:

(1) Respondent shall report the percent removal of influent values for cBOD and TSS.

All other effluent limits, action levels, monitoring requirements and compliance schedule items in SPDES Permit No. NY 002 4414 shall apply.