

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of Violations of Article 17 of the
Environmental Conservation Law of the State of New York
And Title 6 of the Official Compilation of Codes,
Rules, and Regulations of the State of New York, by

ORDER ON CONSENT
Case No. R3-20160912-62

Westchester, County of,

Respondent.

(Westchester County)

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WHEREAS:

1. The New York State Department of Environmental Conservation (“DEC” or “the Department”) is a Department of the State of New York with jurisdiction to administer and enforce the law and regulations pursuant to Article 17 of the New York State Environmental Conservation Law (“ECL”).
2. The County of Westchester (the “Respondent”) maintains offices at 148 Martine Avenue, White Plains, New York 10601-4704.
3. The Respondent is the owner of the Westchester County Airport located at 240 Airport Road, White Plains, New York 10604 (the “Facility”). The Respondent discharges at the Facility pursuant to a State Pollutant Discharge Elimination System (SPDES) Permit, Number NY0075132 (the “SPDES Permit”). The SPDES Permit authorizes the discharge of deicing wastewater and stormwater runoff from the Facility. The Facility contains a deicing fluid collection system and a stormwater management system. Respondent states that the detention basins at the Facility are for the mitigation of flooding and wetland loss in accordance with the directives of the Army Corps of Engineers.

Attachment: ACT - Consent Order Re: Westchester County Airport - DRAFT (10414 : Consent Order Re: Westchester County Airport)

4. The SPDES Permit requires the Respondent to submit monthly Discharge Monitoring Reports (DMRs) to the Department. Department staff has reviewed the Respondent's monthly DMRs for the Facility from January 2014 through June 2016. A review of these DMRs shows that the Respondent violated the effluent limits in the SPDES Permit a total of twenty-one (21) times during the January 2014 through June 2016 reporting period. The Respondent's monthly DMRs establish and document the following violations of the effluent limits in the SPDES Permit:

A. The Respondent violated the effluent limits for carbonaceous biochemical oxygen demand (CBOD), as set forth in the SPDES Permit, a total of fifteen (15) times. 6 NYCRR 750-2.1(e) states in pertinent part that a permittee must comply with all terms and conditions of their SPDES permit. The Respondent violated 6 NYCRR 750-2.1(e) by failing to meet the effluent limits for CBOD as stated in the SPDES Permit.

B. The Respondent violated the effluent limits for pH, as set forth in the SPDES Permit, a total of six (6) times. 6 NYCRR 750-2.1(e) states in pertinent part that a permittee must comply with all terms and conditions of their SPDES permit. The Respondent violated 6 NYCRR 750-2.1(e) by failing to meet the effluent limits for pH as stated in the SPDES Permit.

5. The SPDES Permit requires the Respondent to conduct additional monitoring if the Respondent receives any effluent monitoring results in excess of the stated Action Level for a parameter, and to submit the results of the additional monitoring to the Department no later than the end of the third month following the month when the additional monitoring requirement was triggered.

6. Department staff has reviewed the Respondent's DMRs for the Facility from January 2014 through June 2016. A review of these DMRs shows that the Respondent received effluent monitoring results in excess of the Action Level for linear alkyl benzene sulfonates (LAS), as stated in the SPDES Permit, a total of three (3) times during the January 2014 through June 2016 reporting period. The Respondent's DMRs establish and document that the Respondent received effluent monitoring results in excess of the stated Action Level for LAS.

7. On February 19, 2015, and March 16, 2016, Department staff documented that the Respondent did not timely submit the results of any additional monitoring to the Department after the Respondent received effluent monitoring results in excess of the stated Action Level for LAS a total of three (3) times. 6 NYCRR 750-2.1(e) states in pertinent part that a permittee must comply with all terms and conditions of their SPDES permit. The Respondent violated 6 NYCRR 750-2.1(e) by not timely submitting the results of additional monitoring to the Department after the Respondent received effluent monitoring results in excess of the stated Action Level for LAS, as required by the SPDES Permit.

8. Respondent states that on each occasion Respondent completed a detailed Corrective Action Plan and Root Cause Analysis in accordance with its ISO Certified Environmental Management System. Respondent also states that corrective actions were taken with respect to outside contractors, malfunctioning equipment, and untimely laboratory testing, which had been determined to be the root cause of some violations.

9. ECL § 71-1929 provides that a person who fails to perform any duty imposed by Titles 1 through 11 inclusive and title 19 of Article 17, the rules and regulations promulgated thereunder, or orders or determinations of the commissioner promulgated thereto, shall be liable for a penalty

not to exceed thirty-seven thousand, five hundred dollars (\$37,500) per day for each violation, and may be enjoined from any continuing violation.

10. Respondent admits these violations and affirmatively waives the right to a public hearing in this matter in the manner provided by 6 NYCRR Part 622, consents to the issuing and entering of this Order, agrees to be bound by the terms, provisions, and conditions of this Order, including the Compliance Schedule attached hereto, and waives the right to a public hearing in any matter that may arise under the terms of this Order.

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

I. Civil Penalty.

Respondent shall be liable to pay a civil penalty in the amount of THIRTY-TWO THOUSAND, FOUR HUNDRED DOLLARS (\$32,400), of which TWENTY-ONE THOUSAND DOLLARS (\$21,000) is payable to the Department upon Respondent's return of an executed copy of this Order to the Department. The DEC case number appearing on the first page of this Order shall be endorsed on the face of the check. The civil penalty shall be paid by check, bearing the signature of Respondent, made payable to the "Department of Environmental Conservation" and forwarded to the Regional Attorney, New York State Department of Environmental Conservation, Region 3, 21 South Putt Corners Road, New Paltz, New York 12561. The remaining amount, ELEVEN THOUSAND, FOUR HUNDRED DOLLARS (\$11,400), is suspended provided the Respondent strictly adheres to the terms and conditions of this Order, including the Schedule of Compliance, attached hereto as "Schedule A." If the Respondent violates any term of this Order, including the Schedule of Compliance, the whole amount of the suspended penalty, or any portion thereof, shall be due from the Respondent

within 30 days of receiving written notice from the Department that penalties are due. The determination of the suspended penalty amount shall be in the Department's sole discretion.

II. Schedule of Compliance.

Respondent shall strictly comply with the terms of this Order and with the attached Schedule of Compliance, including any report(s), plan(s), proposal(s), and other submissions made pursuant thereto. The Schedule of Compliance and all such submissions are hereby deemed incorporated into this Order, upon approval by the Department if such approval is required, and shall be fully enforceable as part of this Order.

III. Notice of Noncompliance.

In the event that the Department determines, in the Department's reasonable discretion, that the Respondent has failed to timely and fully comply with any provision of this Order, the Department may serve upon the Respondent a notice of noncompliance setting forth the nature of the violation(s). Service of such notice may be by personal service or by certified mail return receipt requested (restricted delivery not required) at the Respondent's address as specified in Paragraph 3 of this Order, or, if such service is refused or cannot be completed, by ordinary mail. In the event the Respondent has been served a Notice of Noncompliance for items required in this Order or the attached Schedule of Compliance, Respondent shall be granted a reasonable period from receipt of such notice to comply with those identified items without incurring penalty for the identified noncompliance, which shall not exceed thirty (30) days. Within thirty (30) days of receipt of such notice from the Department, Respondent shall submit proof of compliance to the Department, or Respondent may submit a request to the Department for additional time to achieve compliance together with supporting documentation for the request, the approval of such request not to be unreasonably withheld.

IV. Full Settlement.

Until fully remediated in accordance with this Order, all violations described above shall be considered continuing violations. The Department shall not institute any action or proceeding for penalties or other relief for the violations described above other than those actions and penalties set forth in this Order, for so long as Respondent remains in compliance with this Order. Any failure by Respondent to comply fully with the terms of this Order may subject the Respondent to further enforcement action for the violations described above. Compliance with this Order shall not excuse nor be a defense to charges of any violations of the ECL or any regulation or permit issued thereunder, which may occur subsequent to the date of this Order, except as provided herein.

V. Submission.

All reports and submissions required in this Consent Order shall be submitted to the Department, via U.S. Mail, as follows:

a hardcopy original and an electronic copy in .pdf format on Compact Disc to:

Regional Water Engineer
 Division of Water
 New York State Department of Environmental Conservation, Region Three
 100 Hillside Avenue
 White Plains, New York 10603
 Re: Case No. R3-20160912-62

and an electronic copy in .pdf format on Compact Disc to the:

Regional Attorney
 Office of General Counsel
 New York State Department of Environmental Conservation, Region Three
 21 South Putt Corners Road
 New Paltz, New York 12561
 Re: Case No. R3-20160912-62

Respondent shall be responsible for the content of any submissions made pursuant to this Order and shall certify in writing to the Department that such submission complies with the requirements set forth in this Order. Submission of any material containing assertions of fact shall be considered an affirmative representation by Respondent of the truth of such assertions. Respondent shall be in violation of this Order if any submission is of such poor quality that it does not constitute a good faith effort to comply with the provisions of this Order.

VI. Review of Submitted Remedial Plans and Proposals.

After review of any remedial plan or proposal required by this Order and its Schedule of Compliance, the Department shall notify Respondent, in writing, of its approval or disapproval of the submission. If the Department approves the submission, Respondent shall implement it in accordance with its schedule and terms, as approved. If the Department disapproves the submission, the Department shall provide to Respondent written notice of its disapproval, specifying with reasonable particularity the grounds for disapproval. Within thirty (30) days after Respondent receives written notice of disapproval, Respondent shall submit a revised submission which fully responds to each of the Department's specified grounds for disapproval. After the Department's receipt of Respondent's revised submission, the Department shall notify Respondent, in writing, of its approval or disapproval. If the Department approves the revised submission, Respondent shall implement it in accordance with its schedule and terms, as approved. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by DEC to make it approvable. If the Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the

revised submission, the Respondent shall be in violation of this Order. Upon Department approval, a submission or revised submission shall be deemed incorporated into this Order.

VII. Notice of Work.

Respondent shall provide notice to the Department of any excavating, drilling, sampling, construction, or start-up of equipment to be conducted pursuant to the terms of this Order, if any, at least five (5) working days in advance of such activities.

VIII. Inspections.

For the purpose of insuring compliance with this Order, and with applicable provisions of the ECL and regulations promulgated thereunder, representatives of this Department shall be permitted access to the facility and to relevant records during reasonable hours to inspect and/or perform such tests which the Department deems appropriate to determine the status of Respondent's compliance.

IX. Conveyance.

In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Facility, Respondent shall, not less than thirty (30) days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

X. Other Approvals.

Respondent shall be obligated to obtain whatever permits, easements, rights of entry, approvals, or authorizations that may be necessary in order to carry out its obligations under this Order. This Order shall not relieve the Respondent of the obligation to comply with any other

laws, rules, or regulations of the State of New York or any other governmental authority which are applicable to Respondent's activities, nor preclude or limit such enforcement action as may be authorized by law for any such violation.

XI. Other Remedies; Natural Resource Damages.

(a) Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting (1) any legal, administrative, or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that the Department may have against anyone other than Respondent; (2) the Department's right to enforce, administratively or at law or in equity, the terms, provisions and conditions of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall be in breach of the provisions hereof; (3) the Department's right to bring any action, administratively or at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns which the Department could otherwise maintain with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of wastes from the site or from areas in the vicinity of the site, or to require that Respondent take such additional measures as may be necessary for the protection of public health or the environment, including interim remedial measures; (4) the Department's right to commence any action or proceeding relating to or arising out of any disposal of hazardous wastes at the site, as those wastes are defined by applicable regulation; or (5) the Respondent's right to challenge any such action by the Department, whether by administrative hearing or otherwise, to the extent otherwise permitted by law.

(b) Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including the right to recover natural resource damages, against any party, including Respondent.

(c) This Order shall not be construed to prohibit the Commissioner or the Commissioner's duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XII. Indemnification.

Respondent or any successors, assigns, or transferees, shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, its directors, officers, employees, servants, agents, successors, or assigns.

XIII. Force Majeure.

Respondent shall not be in default of compliance with this Order to the extent that Respondent may be unable to comply with any provision of this Order because of the action of a national or local government body or court, an act of God, war, strike, riot or catastrophe as to any of which the negligence or willful misconduct on the part of Respondent was not a proximate cause; provided, however, that Respondent shall use its best efforts to comply. Respondent shall provide written notice to the Department immediately upon obtaining knowledge of such event. In addition, Respondent shall, within twenty-one (21) days of such event, provide written request to the Department for an appropriate extension or modification to this Order, along with documentation evidencing entitlement to relief herein. Relief under this clause shall not be available to Respondent, with regard to a particular event, if Respondent fails

to provide timely notice of such event. The Respondent shall have the burden of proving entitlement to relief under this clause, by clear and convincing evidence.

XIV. Modification.

This Order may not be modified except in a writing executed by the DEC Commissioner or the DEC Commissioner's authorized representative. Reasonable requests for amendments, extensions, and/or modifications shall not be unreasonably withheld.

XV. Default.

The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL, and may constitute sufficient grounds for revocation pursuant to 6 NYCRR 621.13 of any permit, license, certification, or approval issued to the Respondent by the Department.

XVI. Entire Agreement.

The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the violations set forth above. No terms, conditions, understandings, or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing pursuant to Paragraph XIV hereof. No informal advice, guidance, suggestions, or comments by the Department regarding reports, proposals, plans, specifications, schedules, or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

XVII. Binding Effect.

This Order shall be deemed to bind the Respondent, its officers, directors, agents, employees, contractors, successors, and assigns, and all persons, firms, and corporations acting

under or for Respondent, including, without limitation, any subsequent operator of the Facility who may carry on activities now conducted by Respondent at the Facility, and any successor in title to the Facility or any interest therein. Respondent shall provide a copy of this Order (including any submissions incorporated herein) to any contractor or subcontractor hired to perform work required under this Order, and shall require compliance with this Order as a term of any contract entered into after the effective date of this Order for performance of work under this Order. Respondent shall nonetheless be responsible for ensuring that all work performed under this Order is in compliance with the terms of the Order.

XVIII. Effective Date.

This Order shall not become effective until it is signed by the Regional Director on behalf of the Commissioner.

Dated: New Paltz, New York
_____, 2017

BASIL SEGGOS
Commissioner
Department of Environmental Conservation

By: _____
KELLY R. TURTURRO
Regional Director, Region 3
Department of Environmental Conservation

Attachment: ACT - Consent Order Re: Westchester County Airport - DRAFT (10414 : Consent Order Re: Westchester County Airport)

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of this Order without further notice, waives its right to a hearing in this matter, and agrees to be bound by the terms, conditions, and provisions of this Order. The undersigned represents and affirms that they have the legal authority to bind Respondent(s) to the terms and conditions of this Order.

County of Westchester

By: _____

Title: _____

ACKNOWLEDGMENT

On this _____ day of _____, in the year 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as shown in the instrument, and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Attachment: ACT - Consent Order Re: Westchester County Airport - DRAFT (10414 : Consent Order Re: Westchester County Airport)

SCHEDULE A
Schedule of Compliance for Order on Consent

Respondent: County of Westchester
Site or Facility: Westchester County Airport
DEC Case No.: R3-20160912-62

RESPONDENT IS REQUIRED TO SELF-CERTIFY TIMELY COMPLETION OF EACH OF THE ACTIVITIES REQUIRED BY THIS SCHEDULE.

1. **Cease & Desist:** Respondent(s) shall immediately cease and desist from any and all future violations of the New York State Environmental Conservation Law and the rules and regulations enacted pursuant thereto at the Site or Facility, except as provided herein.
2. **Self-certification:** Respondent(s) shall submit to DEC, within fifteen (15) days of each milestone date set forth in this Schedule of Compliance, a signed statement certifying that the work required was completed by that date, and that the work was done in the manner required by this Order.

Submission of the required certification shall be considered an affirmative representation by the Respondent of the truth of its contents. Any false statement made therein shall be punishable pursuant to Section 210.45 of the Penal Law, and as may be otherwise authorized by law.

Failure to submit a required certification by the due date shall be a violation of this Order, and shall establish a rebuttable legal presumption that Respondent has failed to comply with that requirement of the Schedule.

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

All submittals, which shall include a hardcopy original and an electronic copy in .pdf format on Compact Disc, shall be submitted to:

Regional Water Engineer, Department of Environmental Conservation, Region Three, 100 Hillside Avenue, Suite 1W, White Plains, New York 10603-2860; and

an additional electronic copy in .pdf format on Compact Disc shall be submitted to:

Regional Attorney, Department of Environmental Conservation, Region Three, 21 South Putt Corners Road, New Paltz, New York 12561.

Please reference Case No. R3-20160912-62 on all submittals.

Attachment: ACT - Consent Order Re: Westchester County Airport - DRAFT (10414 : Consent Order Re: Westchester County Airport)

Schedule of Compliance for Order on Consent Continued

Respondent: County of Westchester
Site or Facility: Westchester County Airport
DEC Case No.: R3-20160912-62

3. Remedial Activities and Milestones: Respondent(s) shall timely perform the activities set forth below in a good and workmanlike manner and supply all required labor, equipment, and materials at Respondent's own cost and expense.

A. General Requirements

- I. IMMEDIATELY UPON THE EFFECTIVE DATE OF THIS ORDER:
 - a. The Respondent shall comply with the interim SPDES permit limits and conditions attached hereto as Appendix 1.
- II. BY NOVEMBER 1, 2021:
 - a. The Respondent shall comply with all effluent limits and conditions in the SPDES Permit.

B. Stormwater Management System Improvements

- I. WITHIN 1 YEAR OF THE EFFECTIVE DATE OF THIS ORDER:
 - a. The Respondent shall submit to the Department an engineering study and report evaluating the design and treatment capabilities of the existing stormwater management system at the Facility. This report shall include, at a minimum, evaluations of the design and function of all the objectives of the existing stormwater detention basins at the Facility, and the stormwater management system's existing capacity for runoff.
 - b. The Respondent shall submit to the Department a plan for upgrading and maintaining the existing stormwater management system to provide adequate capacity for runoff and ensure the system is functioning properly (the "Stormwater Plan").
- II. WITHIN 3 YEARS OF THE EFFECTIVE DATE OF THIS ORDER:
 - a. The Respondent shall complete any upgrades to the stormwater management system Detention Basins A and B identified in the Stormwater Plan, and submit to the Department a work completion certification signed by a professional engineer.
 - b. The Respondent shall complete construction of any facilities for treatment of stormwater runoff tributary to Outfall # 007 identified in the Stormwater Plan, and

Schedule of Compliance for Order on Consent Continued

Respondent: County of Westchester
Site or Facility: Westchester County Airport
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submit to the Department a work completion certification signed by a professional engineer.

c. The Respondent shall complete all items in the Stormwater Plan.

C. Aircraft Deicing Fluid Collection System Improvements

I. BY OCTOBER 31, 2021:

a. The Respondent shall: increase the coverage area for the deicing fluid collection system to include the taxiways; line the entire 13-acre spent deicing fluid collection system with a polyurethane membrane to reduce the impact to groundwater and Blind Brook; improve the collection, sampling, and storage facilities for spent deicing fluid; and submit to the Department a work completion certification signed by a professional engineer.

Attachment: ACT - Consent Order Re: Westchester County Airport - DRAFT (10414 : Consent Order Re: Westchester County Airport)

**APPENDIX 1
INTERIM EFFLUENT LIMITATIONS, MONITORING REQUIREMENTS, AND CONDITIONS**

Permittee Name: Westchester County
 Facility Name: Westchester County Airport
 SPDES No: NY0075132
 Order on Consent, Case No. R3-20160912-62

During the period beginning with the execution date of the attached Order on Consent and lasting until November 1, 2021, the discharges from the permitted facility shall be limited and monitored by the permittee as specified below. Effluent limitations of all parameters in the SPDES Permit not included in the list below remain per Permit requirement. Failure to abide by the interim limits and conditions may nullify this Order and cause all suspended penalties to become due.

OUTFALL No.	LIMITATIONS APPLY:			RECEIVING WATER
001	June 1 – August 31			Blind Brook/C
PARAMETER	EFFLUENT LIMIT			EXPIRING
CBOD5	Type	Limit	Units	October 31, 2021
	Daily Maximum	11	mg/L	

OUTFALL No.	LIMITATIONS APPLY:			RECEIVING WATER
001	November 1 – May 31			Blind Brook/C
PARAMETER	EFFLUENT LIMIT			EXPIRING
CBOD5	Type	Limit	Units	October 31, 2021
	Daily Maximum	308	mg/L	

OUTFALL No.	LIMITATIONS APPLY:			RECEIVING WATER
003	November 1 – May 31			Blind Brook/C
PARAMETER	EFFLUENT LIMIT			EXPIRING
CBOD5	Type	Limit	Units	October 31, 2021
	Daily Maximum	136	mg/L	

OUTFALL No.	LIMITATIONS APPLY:			RECEIVING WATER
004	June 1 – August 31			Tributary to Rye Lake/A
PARAMETER	EFFLUENT LIMIT			EXPIRING
CBOD5	Type	Limit	Units	October 31, 2021
	Daily Maximum	6	mg/L	

OUTFALL No.	LIMITATIONS APPLY:			RECEIVING WATER
007	June 1 – August 31			Tributary to Rye Lake/A
PARAMETER	EFFLUENT LIMIT			EXPIRING
CBOD5	Type	Limit	Units	October 31, 2021
	Daily Maximum	29	mg/L	

Note: Interim limits were calculated based on the 95th percentile of DMR data from 2013 to 2016.

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