

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

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THE STATE OF NEW YORK AND THE NEW YORK  
STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION,

Plaintiffs,

-against-

CITY OF BEACON,

Defendant.

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COPY

CONSENT DECREE

Index No. 2012-809

Hon. Peter M. Forman

**WHEREAS:**

1. This action arose from the City of Beacon's violations of the Environmental Conservation Law (ECL), including (i) unpermitted discharges of untreated wastewater from its sanitary sewer system into the Fishkill Creek; (ii) violations of Beacon's State Pollution Discharge Elimination System (SPDES) permit for its wastewater treatment plant (WWTP); and (iii) failure to comply with an administrative consent order dated October 25, 2007 with the New York State Department of Environmental Conservation (DEC or Department). The consent order required Beacon to take action to address previously unpermitted discharges from its WWTP, and to comply with all effluent limits in the SPDES permit by October 25, 2008.

2. Plaintiffs State of New York and DEC (collectively, the State) commenced this action in February 2012. Beacon served a verified answer in March 2012.

3. In the complaint, the State seeks an order declaring that Beacon has violated ECL Article 17 by: i) discharging untreated wastewater from point sources without a SPDES permit; ii) exceeding pollution limits in its SPDES Permit; and iii) violating the consent order. The complaint further seeks an order enjoining Beacon from continuing to violate the ECL and requiring Beacon to take all steps necessary to comply with the water pollution prevention requirements of ECL Article 17, and awarding to plaintiffs an appropriate civil penalty for Beacon's violations of the Water Pollution Control Law.

#### REGULATORY FRAMEWORK

4. In adopting the SPDES permit program in ECL Article 17, Title 8, the Legislature created a system to insure that New York possessed the authority to regulate the discharge of pollutants from point sources into the waters of the state.

5. Pursuant to ECL § 17-0101, the public policy of New York is to require the use of all known available and reasonable methods to prevent and control the pollution of the waters of the state.

6. Pursuant to ECL § 17-0102, the purpose of ECL Article 17 is to safeguard the waters of the state from pollution, consistent with the declaration of policy stated in ECL § 17-0101.

7. Pursuant to ECL § 17-0105, the term "waters of the state" includes rivers, streams, creeks, and all bodies of surface or underground water which are wholly or partially within or bordering the state.

8. Pursuant to ECL § 17-0505, it is unlawful for anyone to use an outlet or point source discharging into the waters of the state without a valid SPDES permit.

9. Pursuant to ECL § 17-0511, it is unlawful to use an outlet or point source for the discharge of waste into the waters of the state, unless such use is in compliance with all limitations required by the Department.

10. Pursuant to ECL § 17-0701(1), it is unlawful for anyone to use an outlet or point source for the discharge of sewage, industrial waste, other waste or the effluent into the waters of the state without a SPDES permit.

11. Pursuant to ECL § 17-0803, it is unlawful to discharge pollutants into the waters of the state from a point source without a SPDES permit or in a manner other than as prescribed by a SPDES permit.

12. Pursuant to ECL § 17-1929, any person who violates titles 1 through 11 of Article 17 of the ECL, including violating a DEC permit or order issued thereunder, is subject to injunctive relief and punishable by a civil penalty of up to \$37,500 per day for each violation.

#### The Parties

13. Plaintiff DEC is an executive department of the state with its principal office located at 625 Broadway, in the City of Albany.

14. Pursuant to ECL § 17-0303, DEC has jurisdiction to abate and prevent the pollution of waters of the state, and the DEC Commissioner is authorized to issue orders requiring the discontinuance of the discharge of wastes into any water

of the state. DEC is charged with enforcing the state's environmental laws, including ECL Article 17.

15. Plaintiff State of New York is a body politic and a sovereign entity, and asserts its claim on behalf of itself and as *parens patriae*, guardian, and representative of the residents and citizens of New York.

16. Pursuant to ECL § 71-1929 and 71-1931, the Attorney General is empowered to bring an action for civil penalties and/or injunctive relief against any person violating any of the provisions of titles 1 through 11 of Article 17, any rule or regulation promulgated pursuant thereto, or any order or permit issued thereunder.

17. Defendant City of Beacon is located in Dutchess County, New York, with its offices at 1 Municipal Center, Beacon.

18. Beacon owns and operates the WWTP, located at Dennings Avenue in Beacon.

19. Pursuant to ECL § 17-0105, Beacon is a person for purposes of ECL Article 17.

#### ECL ARTICLE 17 VIOLATIONS

##### Wastewater Collection and Treatment System

20. The Department issued Beacon SPDES permit NY0025976 for its WWTP and wastewater collection system, authorizing discharges into the Hudson River, a water of the state. Beacon's SPDES permit includes conditions which limit pollution discharges as follows: (i) *Settleable Solids*: maximum concentration of 0.3 milliliters per liter ("ml/l"); (ii) *Biochemical Oxygen Demand* ("BOD") 5: 85%

minimum removal; BOD 5: 30-day average: no greater concentration than 30 mg/1 and no more than 1500 pounds per day (lbs/d); BOD 5: 7-day average: no greater concentration than 45 mg/1 and no more than 2250 lbs/d (iii) *Total Suspended Solids* (TSS): 85% minimum removal; TSS 30-day average: no greater concentration than 30 mg/1 and no more than 1500 lbs/d; TSS 7-day average: no greater concentration than 45 mg/1 and no more than 2250 lbs/d; and iv) *Flow*: 6 million gallons per day (mg/d) 30-day average flow.

#### Violations of Consent Order

21. The October 2007 consent order required Beacon to perform an infiltration and inflow study of its wastewater collection system -- how untreated sanitary sewage enters the separate stormwater discharge system -- and submit the results to DEC by January 1, 2008. The consent order further required Beacon to implement improvements to correct the identified infiltration and inflow deficiencies by April 25, 2008. The consent order also required Beacon to meet all final SPDES effluent limits by October 25, 2008.

22. The State alleges Beacon failed to comply with the requirement that it meet its SPDES permit effluent limits by April 25, 2008 and failed to implement all necessary improvements to correct infiltration and inflow deficiencies by April 25, 2008. Beacon denies these allegations.

#### Violations of Discharge Permit Limitations

23. Pursuant to the requirements of its SPDES permit, Beacon has reported the following violations: i) *Settleable Solids* in June 2009, February 2010, March

2010, February 2011, March 2011 and October 2011; ii) *BOD-5 minimum removal* in March 2010, April 2010, February 2011, March 2011, April 2011, September 2011, October 2011, November 2011 and December 2011; and *BOD-5 average and maximum mass loading* in March 2010; iii) *TSS removal* in March 2010 and March 2011; *TSS maximum concentration* in March 2010; *TSS average and maximum mass loading* in March, 2010; and *TSS maximum loading* in March 2011; and iv) *Flow* in March 2010, March 2011 and September 2011.

#### Unauthorized Discharges of Pollution

24. During 2010-2011, Beacon has reported the following sanitary system overflows resulting in the discharge of untreated wastewater at Madam Brett Park in Beacon into Fishkill Creek: manholes and other points on March 15-21, 2010, manholes on March 29, 2010; a manhole on October 1, 2010; a manhole on December 1, 2010; a manhole on March 7, 2011; a manhole on March 16, 2011; a manhole on April 18, 2011; numerous manholes on September 29, 2011; and a manhole and other points on November 23, 2011. Each discharge occurred at a point source and entered Fishkill Creek, a water of the state.

25. The State alleges Beacon failed to report discharges including, but not limited to, from two manholes at Madam Brett Park on February 10, 2009. Beacon denies these allegations.

26. The Department issued to Beacon Notices of Violation regarding the sanitary system overflows in April 2010, October 2010 and March 2011.

## TERMS OF SETTLEMENT

27. The State and Beacon have agreed to a schedule of compliance for improvements to Beacon's wastewater collection and treatment sewage system, as set forth in Appendix 1 of this Consent Decree.

28. Beacon agrees to execute this Consent Decree in settlement of its civil liability for the violations described above and it waives its right to a hearing as provided by law and consents to the issuing and entering of this Consent Decree, and agrees to be bound by the provisions, terms and conditions herein.

NOW, therefore, the parties hereby stipulate and agree to settle all claims raised in the above-referenced case as follows:

### I. JURISDICTION AND VENUE

The Court has jurisdiction of this matter pursuant to ECL §§ 71-1927, 71-1929, and 71-1931, and shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or modification.

Venue is proper in Dutchess County pursuant to CPLR § 502 because Beacon is located there.

### II. PENALTIES AND INJUNCTIVE RELIEF

#### A. Civil Penalty and Environmental Benefit Project

In full satisfaction of the violations of the Consent Order and the ECL violations set forth above, Beacon is hereby assessed a civil penalty in the amount of

\$250,000. Of this sum, Beacon shall remit to the Office of Attorney General of the State of New York a certified check in the amount of \$25,000 payable to the State of New York and shall deliver it to Joseph M. Kowalczyk, Assistant Attorney General, Environmental Protection Bureau, The Capitol, Albany, New York 12224-0341. Such certified check shall be remitted by Beacon to the Office of the Attorney General within 60 days of the entry of this Consent Decree. The remaining \$225,000 of the civil penalty shall be suspended upon condition that Beacon complete the Environmental Benefit Project (EBP) in accordance with the terms of Appendix 2, Environmental Benefit Project Implementation Plan. If Beacon does not complete the EBP in accordance with Appendix 2, it shall remit to the Office of the Attorney General \$225,000 by December 31, 2013. In the event that Beacon spends less than \$225,000 on the EBP, it shall remit the difference to the Office of the Attorney General by December 31, 2013.

Beacon represents that, due to competing fiscal priorities, the EBP is only possible as a condition of this settlement and it was not previously planning on performing the project. Any grant monies or other outside funding that may become available shall not reduce Beacon's obligation to expend at least \$225,000 on the EBP.

B. Stipulated Penalties

(1) In the event Beacon fails to comply with any term of this Consent Decree, including but not limited to the milestone dates imposed in the attached appendices, the State may serve upon Beacon a Notice of Non-Compliance setting



forth the nature of the violations and the calculation of the stipulated penalties due pursuant to this consent decree. Stipulated penalties shall apply as follows:

<u>Period of Noncompliance</u>	<u>Penalty</u>
1st day through 15 <sup>th</sup> day	\$100 per day
15 <sup>th</sup> day through 30 <sup>th</sup> day	\$500 per day
each day thereafter	\$1,000 per day

(2) Any stipulated penalties shall become due and payable upon thirty calendar days written notice from the State to Beacon. Stipulated penalties shall be paid by check made payable to the "State of New York" and delivered to Joseph M. Kowalczyk, Assistant Attorney General, Environmental Protection Bureau, The Capitol, Albany, New York 1224-0341.

(3) Excluded from any stipulated penalty calculation applicable to Appendix 1 shall be the time period during which Department review and approval is pending of any plan submitted by Beacon for Department approval.

C. Injunctive Relief

(1) Beacon shall immediately cease and desist from any and all future violations of the ECL and the rules and regulations enacted pursuant thereto.

(2) Beacon shall comply with the terms and conditions of Appendix 1, Wastewater Collection and Treatment.

(3) Within sixty days of the effective date of this Consent Decree, Beacon shall implement a program for monitoring, quantifying and tracking the removal of inflow and infiltration (I & I) from the sanitary sewer system. This I & I monitoring

program shall identify where I & I is removed from, how I & I is removed, the volume of I & I removed and the impact on flow as it is metered at various points in the system. Every six months, beginning six months from the effective date of this Consent Decree and continuing throughout the life of this Consent Decree, Beacon shall submit I & I program progress reports to DEC. The I & I monitoring program and progress reports shall be designed to provide information for Beacon, DEC, and the Dutchess County Health Department regarding future candidates for connection to the sanitary sewer system.

III. GENERAL PROVISIONS

A. Services of Notices and Reports

Compliance schedule submittals, notices of noncompliance, and all other documents required by this Consent Decree shall be made via regular mail or overnight delivery as follows:

For the State:

Joseph M. Kowalczyk, Esq.  
Assistant Attorney General  
Environmental Protection Bureau  
Office of the Attorney General  
The Capitol  
Albany, New York 12224

Zackary Knaub, Esq.  
Regional Attorney  
NYSDEC Region 3 Headquarters  
21 South Putt Corners Road  
New Paltz, New York 12561-1696

For Beacon:

Nicholas M. Ward-Willis, Esq.  
Keane & Beane, P.C.  
445 Hamilton Avenue  
White Plains, New York 10601

Hon. Randy Casale  
Office of the Mayor  
1 Municipal Center  
Beacon, New York 12508

B. Force Majeure

Beacon shall not be in default of compliance with this Consent Decree to the extent that it is unable to comply with any provision of this Consent Decree because of the action of a national or state 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 Beacon was not a proximate cause; provided, however, that Beacon shall use its best efforts to comply. Beacon shall provide notice to the State in writing immediately upon obtaining knowledge of such event, and shall request an appropriate modification to this Consent Decree. Relief under this clause shall not be available to Beacon, with regard to a particular event, if it fails to provide timely notice of such event. Beacon shall have the burden of proving entitlement to relief under this clause, by clear and convincing evidence.

C. Modifications of Consent Decree

No terms, conditions, understandings, or agreements purporting to modify the terms of this Consent Decree shall be binding unless approved in writing by the Court. No informal advice, guidance, suggestions, or comments by the State regarding reports, proposals, plans, specifications, schedules, or any other writing submitted by Beacon shall be constructed as relieving it of its obligation to obtain such formal approval as required by this Consent Decree.

D. Indemnification and Hold Harmless and Release

Beacon shall indemnify and hold the State, their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description brought, claimed or sought by a third party and arising out of or

resulting from the fulfillment or attempted fulfillment of this Consent Decree by Beacon, its trustee, officers, employees, agents, successors or assigns. Provided, however, the indemnification obligation does not extend to any claims, suits, actions, damages or costs to the extent attributable to grossly negligent, intentional, reckless, or unlawful acts.

E. Reservation of Rights

Nothing contained in this Consent Decree shall be construed as barring, diminishing, adjudicating or in any way affecting:

1. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Beacon with respect to investigation, remedial or corrective action or claims for natural resources damages as a result of any and all activities conducted with regard to the wastewater collection system or in the vicinity of the WWTP. Nothing in this Consent Decree shall be construed or deemed an admission by Beacon with respect to such investigation, remedial or corrective action or claim for natural resources damages.

2. Except as otherwise provided in this Consent Decree, any legal or equitable rights or claims, actions, proceedings, suits, cause of action or demands whatsoever that the State may have against Beacon for any violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder which are not set forth in paragraphs 21 through 26 above.

F. Site Access

Authorized representatives of DEC shall be permitted access to Beacon's premises where an effluent source is located or where records are maintained in order to inspect and or require such tests as may be appropriate to determine the status of compliance with this Consent Decree and/or the ECL.

G. Binding Nature of Decree

The provisions, terms and conditions of this Consent Decree shall be binding on the parties, their successors and assigns.

H. Entire Agreement

This Consent Decree memorializes and construes the entire, final, full, and exclusive agreement and understanding between the State and Beacon with respect to the matters covered herein, and supersedes and replaces all prior negotiations, proposed agreements, consent orders, and agreements, whether written or unwritten. Nothing herein shall constitute a settlement or release of any claims the State may have against Beacon other than those expressly alleged in the Verified Complaint, or as set forth above.

I. Effective Date

The Effective Date of this Consent Decree shall be the date that it is entered.

**CONSENTED AND AGREED TO:**

CITY OF BEACON

By: Randy Casale  
Hon. Randy Casale  
Mayor, City of Beacon  
1 Municipal Center

3/19/03  
Date

Beacon, New York 12508

By: 

Nicholas M. Ward-Willis, Esq.  
Keane & Beane, P.C.  
Attorneys for City of Beacon  
445 Hamilton Avenue  
White Plains, New York 10601

3/25/13

Date

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
Attorney for the Plaintiffs

By: 

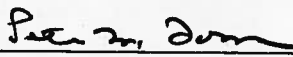
JOSEPH M. KOWALCZYK  
Assistant Attorney General  
Environmental Protection Bureau  
Office of the Attorney General  
The Capitol  
Albany, New York 12224

3/27/13

Date

SO ORDERED this 27 day of MARCH, 2013

ENTER

  
Hon. Peter M. Forman, AJSC

## APPENDIX 1

### Wastewater Collection and Treatment

<b>General Description</b>	<b>Required Actions</b>	<b>Compliance Deadlines</b>
A. 2012 televised sewer line investigation based upon 2011 smoke testing	<ul style="list-style-type: none"> <li>• Submit report for DEC review and approval with investigation results</li> <li>• Submit proposed work plan and compliance schedule for DEC review and approval.</li> <li>• Implement the six page sewer improvement table attached as Appendix 1, Exhibit A</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completed</b></li> <li>• <b>Completed</b></li> <li>• <b>See Appendix 1, Exhibit A</b></li> </ul>
B. 2012 smoke testing	<ul style="list-style-type: none"> <li>• Smoke testing of Quadrants 5, 6, 7, 8, 10 and 17 pursuant to "Smoke Testing Quad Map – Beacon GIS," dated 2/2/11</li> <li>• Submit Smoke Test Report to DEC.</li> <li>• Issue Notices of Violation to non-complying Residents</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completed</b></li> <li>• <b>Completed</b></li> <li>• <b>Completed</b></li> </ul>
C. 2013 Sewer cleaning and televising work identified in 2012 Smoke Test Report	<ul style="list-style-type: none"> <li>• Award Bid</li> <li>• Commence Work</li> <li>• Complete work</li> <li>• Submit report for DEC review and approval with investigation results and proposed work plan and compliance schedule</li> </ul>	<ul style="list-style-type: none"> <li>• <b>March 25, 2013</b></li> <li>• <b>April 30, 2013</b></li> <li>• <b>July 26, 2013</b></li> <li>• <b>September 27, 2013</b></li> </ul>
D. Install rain gauges	<ul style="list-style-type: none"> <li>• Install rain gauges at the water plant and the treatment plant</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completed</b></li> </ul>
E. 2012 Flow Monitoring	<ul style="list-style-type: none"> <li>• Complete flow metering at strategic locations along the south interceptor.</li> <li>• Submit report for DEC review and approval with monitoring results and proposed work plan and compliance schedule</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completed</b></li> <li>• <b>May 1, 2013</b></li> </ul>
F. Modeling	<ul style="list-style-type: none"> <li>• Update the model to reflect infrastructure changes and 2012 precipitation and flow data received during 2012.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completed</b></li> </ul>
G. South sewer interceptor repair work	<ul style="list-style-type: none"> <li>• Submit report certifying the work was completed</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completed</b></li> </ul>

H. Corrective action to capacity limitation between Wolcott and South Avenues	<ul style="list-style-type: none"> <li>• Complete construction and submit report certifying the work was completed.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completed</b></li> </ul>
I. 2011 Flow Monitoring	<ul style="list-style-type: none"> <li>• Submit a summary of 2011 flow data</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completed</b></li> </ul>
J. Follow up of 2011 Smoke Test Report violations	<ul style="list-style-type: none"> <li>• Submit a status report to DEC</li> <li>• Commence court actions against all non-complying residents</li> <li>• Submit status report regarding all Court actions against residents</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completed</b></li> <li>• <b>Completed</b></li> <li>• <b>Completed</b></li> </ul>
K. 2012 citywide sewer repairs	<ul style="list-style-type: none"> <li>• Submit report summarizing citywide repairs</li> </ul>	<ul style="list-style-type: none"> <li>• <b>March 15, 2013</b></li> </ul>
L. Visual inspection of manhole and sewer pipe locations	<ul style="list-style-type: none"> <li>• Complete external observation of structure interior for attributes and condition</li> <li>• Submit report for DEC review and approval with inspection results and proposed work plan and compliance schedule.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completed</b></li> <li>• <b>Submitted</b></li> </ul>



Appendix 1, Exhibit A

Item No.	Road Name	Upstream Manhole No.	Downstream Manhole No.	Problems	Recommendations	Action Schedule	Length	Diam.
1	Catherine	2016	2016A	None	None		238.4	8
2	Catherine	2016	2005	light pipe break @ 130.9 ft from MH 2016; hole in pipe @ 131.7 ft; medium pipe break @ 151.8 ft from MH 2016	slip line	Complete by 10/2015	238.1	8
3	Catherine	2016A	2016	None	None		238.4	8
4	Depuyster	5682	5683	None	None		125.1	8
5	Depuyster	5683	5688	Heavy infiltration (gushing)- cracks & joints	Slip Line sewer run	Complete by 10/2013	105.4	8
6	Duncan	6250	6240	roots in joints; collapsed laterals with soil and rock showing; light broken pipe; slight sag/belly; protruding lateral	remove roots; cut protruding lateral; and slip line	Complete by 10/2015	244	8
7	Duncan	6260	6250	protruding lateral; multiple medium pipe breaks; hole in pipe; offset and separated joints with leaking (infiltration)	cut protruding lateral and slip line	Complete by 10/2015	260.3	8
8	Dutchess Terrace	Cleanout	719 (4087)	offset joints; protruding laterals; infiltration in joints & cracks	Install manhole at existing lamp hole, cut protruding laterals; and Slip Line main	Complete by 10/2015	217.6	8
9	Eliza	1687	1699	infiltration at joints	Slip line main	Complete by 10/2015	281.9	12
10	Eliza	1699	1671	medium roots in joints	Remove roots	Complete by 10/2015	35.8	12
11	Eliza	1671	1670	None	None		15.1	12
12	Eliza	1670	1663	None	None		157.9	12
13	Eliza	1663	1659	None	None		171.6	12
14	Fowler	430A	430	heavy broken and shattered/collapsing pipe; light roots; leaking capped lateral;	replace sewer line	Complete by 10/2013	162.7	8
15	Fowler at Teller	429A	439	lamp hole at end	Install MH at lamp hole	Complete by 10/2015	215.2	8
16	Fulton	430	425	medium pipe break at 362 ft from MH 430; damage in MH 425	Patch repair break; rehabilitate MH 425	Complete by 10/2015	364	8
17	Glenford	6849	6790A	significant leaking (infiltration) at joints	Slip line main	Complete by 10/2013	234.5	8
18	Glenford	6790A	6790	Offset joints with infiltration along pipe run; severe joint offset	correct severe joint offset & slip line main	Complete by 10/2013	52.3	8
19	Glenford	6790	6795	significant leaking (infiltration) through offset and separated joints and cracked pipe	Slip line main	Complete by 10/2013	275.6	8
20	Herbert	373	372	Infiltration at joints; broken pipe	Replace sewer main	Reconstruction of entire road scheduled	345.8	8
21	Herbert	372	375	Surcharged	Replace sewer main	Reconstruction of entire road scheduled	10.6	12

Appendix 1, Exhibit A

22	Herbert	3276	3219	cracked pipe & open joints	Replace sewer main	Reconstruction of entire road scheduled	35.6	10
23	Herbert	3276	3222	cracked pipe & open joints	Replace sewer main	Reconstruction of entire road scheduled	224.9	12
24	Herbert	3222	3209	Broken pipe sections & open joints	Replace sewer main	Reconstruction of entire road scheduled	304.5	12
25	Hillside Road	6815	6812	severe joint offset at 185 ft from MH 6815; multiple cracks throughout pipe	Repair joint	Complete by 10/2013	239.9	8
26	Hillside Road	6812	6796	Multiple medium breaks along sewer run; offset joints; separated joints/open joints	Replace sewer main	Completed by 10/2013	140.7	8
27	Hillside Road	6806	6796	Multiple breaks along sewer run; hole in pipe, deformed pipe (egg shape); heavy cracking; open joints; and heavy infiltration through several joints and cracks	Replace sewer main	Complete by 10/2013	136.5	8
28	Hillside Road	6796	6797	None	None		134.7	8
29	Hillside Road	6797	3609	Pipe dropped at 160 ft from MH 6797 (complete 4 to 5 inch drop between pipe sections)	repair dropped section of pipe	Complete by 10/2013	160.2	8
30	Howland	5588	5582	broken pipe with pipe sections missing	replace sewer main	Complete by 10/2015	117.9	8
31	Jefferson	6840	6837	infiltration observed through multiple cracks and joints along line; hole in pipe; roots in joint	Slip line	Complete by 10/2014	215.3	8
32	Jefferson	6837	6831	Offset joints and separated joints along pipe run	Slip line	Completed by 10/2014	96.6	8
33	Jefferson	6841	6840	main break at 72 ft from MH 6840; pipe collapsed at 115 ft from MH 6840;	Repair broke and collapsed sections and slip line	Complete by 10/2013	116.5	8
34	John Street	428	426	numerous separated joints along pipe length	None		247	
35	Kent	389	385	None	None		80.5	10
36	Kent	383	389	protruding collapsed lateral at 17.2 ft from MH 389, offset joints with infiltration	repair lateral connection and slip line	Complete by 10/2015	341.1	10
37	Kent At Eliza	383	388	infiltration noted from cracks and joints	Slip line	Complete by 10/2015	115.5	8
38	Mackin Avenue	4055	1395	None	None		166.2	8
39	Mackin Avenue	1377	1383	None	None		304.3	8
40	Mackin Avenue	Reverse		Replace 7 Ft. from MH 1383		Complete by 10/2015		8
41	Main Street	1659	7966	severe sag/belly (under water) @ 9 ft from MH 1659	repair sag/belly	Complete by 10/2015	187.7	12
42	Main Street	7966	7971	None	None		53.5	12

Appendix 1, Exhibit A

43	Main Street	7971	7972A	collapse damage at entrance to MH 7972A	repair MH 7972A	Complete by 10/2015	7.2	12
44	Main Street	7972A	7972	None	None		171.5	12
45	Main Street	7972	2939	None	None		176.1	12
46	Phillips	6005	5995	Multiple cracks along pipe sections; leaking joints (infiltration); heavily broken pipe @ 145 ft to 160 ft from MH 6005	Repair broken section of pipe and slip line	Complete by 10/2013	237.4	15
47	Phillips	6005	6007	Check constant flow from 53.7' from service	Investigation of flow sources	Complete by 10/2013	139.4	15
48	Phillips	6007	3675	None	None		90.1	15
49	Phillips	6083	5995	None	None		382.9	15
50	Pleasant View	6823	6826	None	None		80.4	8
51	Pleasant View	6829	6830	Roots observed in MH 6829; Infiltration observed in cracks and joints along length of pipe run	Rehabilitate MH 6829; slip line pipe run	Complete by 10/2013	97.6	8
52	Rector	5975A	5975	Multiple light pipe breaks; severe sag from 184 to 210 ft from MH 5975	replace pipe section where pipe sags; and patch repair leaking joint	Complete by 10/2015	434.3	8
53	Rector	5975A	3691	None	None		67.5	8
54	Rector	5976	5975	None	None		425.8	8
55	Rector	Dead End MH	5976	None	None		286.4	8
56	Rector	5976	5975 towards Wolcott	light pipe break; hole in pipe; cracked pipe	install new MH at 5975; slip line	Complete by 10/2015	425.8	8
57	Rector	5976	5975A	severe pipe offset and turn	replace pipe	Complete by 10/2015	8.5	8
58	Rector	5975A	3691	None	None		36.8	8
59	Robinson	Lamp Hole	6260	None	None		24.5	8
60	Rombout	416	417	line collapsed @ 8.5 ft from MH 416	repair collapsed section	Complete by 10/2013	9.4	8
61	Rombout	416A	416	None	None		82.9	8
62	Rombout	2411	2407	light roots in joints; multiple offset joints; leaking capped lateral	remove roots and slip line	Complete by 10/2013	111	8
63	Rombout	2407	2400	Heavy infiltration at joints and cracks; protruding laterals	cut protruding laterals and slip line	Complete by 10/2013	305	8
64	Rombout	2400	2393	None	None		128.8	8
65	Sargent to Wodenethe	7117	439	light to medium roots; capped lateral	cut out roots and slip line	Complete by 10/2015	87.5	8
66	Sargent to Wodenethe	439	440	leaking	None		133.9	8
67	Spring Valley	5723	3699	severe joint offsets; multiple heavy broken and shattered pipe; deformed pipe (egg shaped); sag/belly section	replace sewer line	Complete by 10/2014	223	8
68	Spring Valley	5724	5723	heavily damaged and shattered pipe; section of corrugated pipe	replace sewer line	Complete by 10/2014	94.3	8

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69	Spring Valley	5728	223	medium broken and shattered pipe @250 ft to 272 ft from MH 5728	replace broken/shattered pipe section	Complete by 10/2014	373.3	8
70	Spring Valley	5780	5762	Infiltration through joints, cracks, and capped laterals	Slip line main	Complete by 10/2014	494.2	20
71	Spring Valley	5762	5742	roots, heaving cracking with infiltration, light broken section	remove roots and slip line	Complete by 10/2014	287.3	20
72	Spring Valley	5742	5736	None	None		301.9	20
73	Spring Valley	5761	5743	Multiple medium pipe breaks with stones showing; deformation of pipe	Replace sewer main	Complete by 10/2014	449.6	20
74	Spring Valley	5728	5736	light pipe break; protruding laterals; heavy pipe cracking; slight pipe deformation	cut protruding laterals and slip line	Complete by 10/2014	320.5	8
75	Spring Valley	5728	5723	pipe broke with partial collapsed	Replace sewer main	Complete by 10/2014	145	8
76	Spring Valley	5723	3699	multiple cracks, broken pipe, holes in pipe, and sags	Replace sewer main	Complete by 10/2014	91.9	8
77	St. Lukes	6116	5763	multiple protruding laterals; broken and collapsed pipe (stones and soil showing) from 210 ft to 290 ft from MH 6116 (infiltration running in this section)	cut protruding laterals and replace broke/collapsing section	Complete by 10/2013	290.8	8
78	Union Street	6076	6083	None	None		77.7	10
79	Union Street	MH U + J Union/Jordan	6195	light roots; light pipe breaks at multiple points; protruding service	remove roots; cut protruding lateral; and slip line	Complete by 10/2015	232	10
80	Union Street	6195	6055	light to heavy roots along all joints	remove roots and slip line	Complete by 10/2015	73.6	10
81	Union Street	6055	6067	Multiple light breaks in pipe; hole in pipe; offset joints with infiltration; roots in joints	remove roots and slip line	Complete by 10/2015	234.5	10
82	Union Street	6056	6067	None	None		323	10
83	Union Street	6067	6075	None	None		277	10
84	Union Street	6075	6083	medium break at 119 ft from MH 6083; leaking capped lateral services at 83.7 ft and 127.3 ft from MH 6083	repair break and re-seal leaking capped lateral services	Complete by 10/2015	105.6	10
85	University	6826	6829	Hole in pipe; roots at several joints; severe joint offsets; multiple light to medium pipe breaks	slip line	Complete by 10/2013	87.5	8
86	University	6830	6831	Offset joints with infiltration along pipe run	slip line	Complete by 10/2013	75	8
87	University	6831	6843	broken pipe @ 98.9 Ft. from MH 6831	repair pipe break	Complete by 10/2013	100.8	8
88	University	6846	6849	heavily damaged and collapsing pipe at 48 ft to 52 ft from MH 6849	repair damaged pipe section	Complete by 10/2013	72.4	8
89	University	6843	6846	None	None		96.9	8
90	Vail Avenue	6046	6092	Pipe broke and shattered 317 ft from MH 6046	repair damaged pipe section	Complete by 10/2013	456.4	8

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91	Vail Avenue	6092	5995	Protruding sewer lateral 3.2 ft in from MH 6092	Cut protruding service at 3.2 Ft. in from MH 6092			8
92	Vail Avenue	5995 - Reverse	6092	constant flows noted from sewer laterals at 226.8 ft, 270.6 ft, and 334.5 ft from MH 5995; several joints noted as leaking (infiltration)	Check service at 226.8 from 5995, constant flow; same at 270.6 & 334.5 - Cut protruding lateral, & Slip line	Complete by 10/2015	357	8
93	Verplanck	2981	3012	Severe joint offsets; broken pipe; shattered pipe; heavy cracking; holes in pipe	Replace sewer main	Complete by 10/2015	309.9	8
94	Verplanck	3012	3075	Pipe broke and collapsing; offset joints; and heavy cracking of pipe; pipe shifted at joint; deformed pipe (egg shaped); infiltration through joints	Replace sewer main	Complete by 10/2015	326.8	8
95	Vine	544	543	Protruding laterals, and infiltration noted at joints	Cut protruding laterals and slip line main	Complete by 10/2013	306.3	8
96	Vine	2321	2317	Protruding laterals, and Gushing infiltration noted	Cut protruding laterals and slip line main	Complete by 10/2013	302.8	8
97	Vine	426	425	medium pipe break with collapsing pieces at 226.5 ft from MH 426	repair pipe break	Complete by 10/2013	248.1	8
98	Vine Street	425	424	light and medium pipe breaks; multiple holes in pipe multiple pipe sags/bellies; failing capped lateral; multiple cracks; offset joints	replace pipe line	Complete by 10/2014	317.3	8
99	Vine Street	427	426	None	None		248.1	8
100	Washington	33	34	None	None		265.9	8
101	Washington	34	35	light to heavy roots	cut out roots	Complete by 10/2015	296.9	8
102	Washington	35	36	medium pipe break; hole in pipe leaking; shattered pipe; heavy roots	cut out roots and slip line	Complete by 10/2014	241.3	8
103	Washington	36	37	light to heavy roots; multiple cracks along pipe run; offset joints; multiple medium pipe breaks	cut out roots; repair pipe break from 266 ft to 275 ft from MH 37; slip line	Complete by 10/2014	289.8	8
104	Washington	52	37	medium pipe break at 140 ft from MH 52	Patch repair break	Complete by 10/2015	143.4	8
105	Washington	52	53	medium pipe break @ 2.8 ft from MH 52	Patch repair break	Complete by 10/2015	139.7	8
106	Washington	5889A	5889	light roots; multiple light pipe breaks; multiple pipe sags/bellies (light); numerous pipe cracks; heavy pipe break at 208 ft from MH 5889A	remove roots; repair heavy pipe break, and slip line	Complete by 10/2014	329.3	8
107	Washington	55	5889A	light to medium roots at joints along pipe run	remove roots and slip line	Complete by 10/2015	191.5	8
108	Washington	53	54	None	None		283.8	8
109	Washington	54	55	light to medium roots	remove roots	Complete by 10/2015	195.9	8

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110	Washington	35	36	None	None	None	None	291.9	8
111	Washington	34	35	None	None	None	None	306.9	8
112	Washington	52	53	None	None	None	None	209.5	8
113	Wodenethe	7119	440	heavy broken pipe; missing pieces of pipe; leaking capped lateral; and light roots	light to heavy roots along all joints; protruding laterals	replace sewer main	Complete by 10/2013	294.2	8
114	Wodenethe	7118	7119	None	None	remove roots; cut protruding laterals; and slip line	Complete by 10/2015	244	8
115	Wodenethe	443	7119	None	None	None	Complete by 10/2015	172.7	8
116	Wodenethe	End in front of	7119	dead-end with out entry	None	install MH at dead-end	Complete by 10/2015	133.8	8
117	Wodenethe	7110	7118	4" line appears to be service line	None	None	Complete by 10/2015	296.1	8
118	Wodenethe	7107	454	light to heavy roots	None	remove roots	Complete by 10/2015	207.8	8
119	Wodenethe	454	7702B	None	None	None	Complete by 10/2015	115.1	8
120	Wodenethe	7702B	7702A	None	None	None	Complete by 10/2015	250.7	8
121	Wodenethe	7702A	7702	Protruding lateral at 135.4	None	Cut protruding lateral	Complete by 10/2015	130	8
122	Wolcott	3658	3662	None	None	None	Complete by 10/2015	301	8
123	Wolcott	3662	3668	None	None	None	Complete by 10/2015	274.8	8
124	Wolcott	3668	3674	None	None	None	Complete by 10/2015	171.5	8
125	Wolcott	3674	3668	None	None	None	Complete by 10/2015	171.5	8

## APPENDIX 2

### Environmental Benefit Project Implementation Plan Fishkill Creek/Rail Trail Extension Project

#### 1. Project Description

As an Environmental Benefit Project (EBP), Beacon shall construct a multi-use trail connecting the Longdock-Beacon Point Park trail system with the Madame Brett Park trail system. With this connection, it will be possible to travel from the Long Dock-Beacon Point Park, along the Hudson River and the Fishkill Creek, to Scenic Hudson's Madame Brett Park. Attached as Appendix 2, Exhibit A is a survey map with a highlighted portion reflecting the center line of the Fishkill Creek/Rail Trail Extension Project.

Beacon represents that implementation of the EBP will cost approximately \$390,000. Such costs include estimated costs for construction observation, construction administration, insurance, any necessary bonds, and the cost for Metro-North flaggers as the work is being done adjacent to the railway tracks. Beacon further represents that, due to competing fiscal priorities, this project is only possible as a condition of this settlement and defendant was not previously planning on performing the project.

The monetary value of the EBP is \$225,000 for purposes of this consent decree. Should non-debt funding become available, defendant shall not use any such non-debt funding for payment or reimbursement of the \$225,000 attributed as the monetary value of the EBP.

## 2. Project Construction Details

Beacon shall construct a pedestrian trail along the Metro-North Rail, to allow for the connection of the trail from Scenic Hudson land near the Metro-North train station to the trail constructed along the Fishkill Creek in general conformance with plans prepared by Dufresne-Henry, dated April 16, 2003, and a revised plan prepared by Stantec Consulting Services Inc., dated August 2007. There will be a further revised plan submitted to DEC and the Attorney General for review and approval once approved by Metro North. Construction of the approximately 710 foot long, eight foot wide paved trail with two foot shoulders on each side shall include clearing, grading, filling, installation of storm drainage piping, installation of retaining walls, installation of fencing, paving and restoration of disturbed areas.

The EBP shall further include an environmental educational kiosk addressing water pollution control approved by plaintiffs and sign stating that the trail was a constructed pursuant to a consent decree resolving an action enforcing New York State's Environmental Conservation Law.

It is anticipated that the final approved construction plan will include the following elements:

- Drainage Manholes - 2 structures x 7 ft./each;
- Manhole castings - 2;
- 24" HDPE drainage pipe - 376 linear feet;
- 24" HDPE 11 1/4° bends - 4;
- 24" HDPE flared ends - 2;



- 12" HDPE drainage pipe - 28 linear feet;
- 12" HDPE flared ends - 2;
- Concrete Headwall - 10 feet wide x 6 feet high;
- Stone drainage channels - 200 feet;
- Grass swales - 380 linear feet;
- Rip-rap - 444 square feet / 9;
- Silt fence - 800 feet;
- Stone Check Dams - 11 feet;
- Erosion blankets - 6,000 square feet / 9;
- Stabilized entrance;
- Clearing & stump removal;
- Grading - 5,600 square feet;
- Fill imported & placed - 1/386 cubic yards;
- Trail base material - 878 square yards;
- 3" pavement course - 610 square yards;
- 3 foot high wall - 180 ft. x 4 feet;
- 8 foot high fencing - 1,345 square feet;
- Removable Bollards - 5;
- Environmental Education Kiosk - 1; and
- Sign stating the trail was completed pursuant to this consent decree - 2' x 3'.

### 3. Compliance Schedule

- Submit construction plan for review and approval by May 1, 2013;

- Award bids by July 1, 2013;
- Commence work by August 1, 2013;
- Complete work by October 15, 2013; and
- Submit report certifying the project was completed in accordance with this compliance schedule and the approved construction plan by December 1, 2013.

ok, P

# Klara Sauer - Madam Brett Connecting Trail

