

One Size Does Not Fit All: Rethinking the Consent Order Calculus

You may have heard the terms “consent order,” “consent decree,” or “consent judgment,” but what do they mean and how do they impact DEP? A consent order, decree, or judgment are binding legal documents, much like a contract, which memorialize a consensual agreement between parties. A typical consent order settles a past violation or may establish a path to bring the agency into compliance with an outstanding legal obligation; in return, the regulator agrees not to proceed with further legal action, so long as the agency remains in compliance with the consent agreement. These orders generally have specific milestones, which must be met or the agency may be liable for financial penalties.

At DEP, most consent orders are entered into between DEP and our state and federal regulators to resolve claims concerning the requirements of environmental



laws such as the Clean Water Act of 1972, which seeks to protect our waterways, or the Safe Water Drinking Act of 1974, which ensures the quality of Americans' drinking water.

Some of the consent orders imposed by our regulators mandate compliance with a specific regulatory requirement by requiring DEP to undertake a costly capital project without consideration of the project's comparative public health benefit, competing water system priorities, or likely impact on consumers who pay the bills. For instance, DEP entered into an

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Spotlight on Safety

Prevent Back Injuries

Office workers can injure themselves through poor lifting techniques. Stooping over from the waist to lift with poor balance, or awkward positioning, most often results in an injury because a strain is caused to the abdominal and back muscles. Workers may put themselves at risk with excuses like:

- “I don’t have time to wait for help.”
- “It’s not that heavy.”

Don’t lift an item if you:

- Have to strain to budge it.
- Won’t be able to see over it while you carry it.

When you want to move or lift heavy items/equipment on the job:

- Use safe lifting techniques.
- Bend your knees and squat down close to the object.
- Get a good grip and rise slowly, keeping your back comfortably straight.
- Use your leg muscles to power the lift, not your back.

To read the full article, please click here [🔗](#).

At DEP, everyone is responsible for safety. If you or anyone on your team is concerned about your working conditions, it's okay to ask your supervisor or your bureau's EHS liaison how they can help. If you've still got questions, you can call the EHS Employee Concerns Hotline. It's DEP's responsibility to acknowledge and fix unsafe situations, procedures, and practices. With your help, we'll not only get the job done, we'll make it safer for ourselves, our coworkers, our families, and our city.

CALL (800) 897-9677 OR SEND A MESSAGE THROUGH PIPELINE. HELP IS ON THE WAY. [🔗](#)

Commissioner's Corner

This morning, I was honored to preside over a promotional ceremony at our Eastview Precinct for DEP's three newest Lieutenants: **Christian Gallagher**, who started with the DEP Police in 2001 and served in the U.S. Army before that; **Tavan Novi**, who until this morning served as Executive Officer of the DEP Police Academy; and **Shane Turck**, who has served in the Emergency Service Unit and received a Meritorious Police Service Award for Heroism in 2008. Colleagues, family, and friends attended the ceremony, and Deputy Commissioner **Kevin McBride** and I stressed the enhanced leadership role that our newest lieutenants will take in protecting our watershed, and implementing DEP's Strategic Plan [🔗](#). We also honored Detective **Jon Asher**, who is retiring after more than 30 years of distinguished service with the DEP Police, most recently in the Gilboa Precinct in Schoharie County. Jon's dedication and experience will be missed, but he is leaving DEP stronger than ever, and we hope he'll become an active member of the DEP alumni association [🔗](#).

Last week, Professional Women in Construction named the \$1.6 billion Ultraviolet Disinfection Facility under construction in Westchester as its 2011 Project of the Year. The facility, scheduled to be complete in 2012, will disinfect all of the drinking water from our Catskill and Delaware watersheds each day, and minority- and women-owned business enterprises have been a big part of the success of this project—which is ahead of schedule. On this project alone we had contracts with 37 minority-owned businesses and 40 women-owned businesses for a total of \$60 million. Professional Women in Construction is led by President **Lenore Janis**, and has been a great



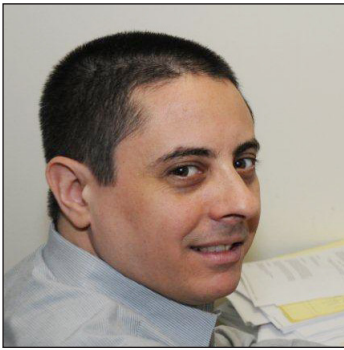
partner with DEP for more than 25 years, helping us to attract the widest selection of firms to build and maintain DEP's massive infrastructure. This honor is a tribute to DEP and the hundreds of architects, engineers, skilled trades, and others working on the UV plant, and our many other projects.

Yesterday, we held our fifth community outreach meeting in Chinatown, and we were joined by Council Member **Margaret Chin**, and the head of the Chinatown Partnership, **Wellington Chen**. This first round of meetings were a chance to talk about DEP's major successes and initiatives in 2010 and early 2011, including the NYC Green Infrastructure Plan, and how we're using our strategic plan to reduce operating costs and improve customer service. This Friday I'll present the FY 2012 water rate proposal to the Water Board, followed by two weeks of public hearings to explain the proposal to the community, answer questions, and help customers with any issues they may have. While we have worked hard to improve service and cut costs over the past 15 months, we have much more to do to deliver the high quality service New Yorkers expect at a price they can afford. I'll have more to say about the proposal and its elements next week.

Milestones

Congratulations to the following long-serving BWT employees on their retirement: **Henry Aurdahl**, 49 years; **Bob Fingado**, 38 years; **Gary Gisonna**, 37 years; and **Richard Russo**, 33 years—a combined total of 157 years. Best wishes to everyone!

Focus on the Field



DEP's Bureau of Legal Affairs (BLA) tracks the progress of all capital improvements associated with milestones under various consent orders or judgments. That's one of the many responsibilities **Matthew Ruderman** faces as an Assistant Counsel in BLA. He also negotiates the terms of settlement documents and counsels the operating bureaus on compliance with a myriad of environmental laws, such as compliance with Clean Water Act obligations. Matthew works collaboratively with other departments to assist in obtaining permits for critical work or resolving claims of non-compliance made by federal and state regulators. He is very aware that missing a deadline could result in a violation that could cost the agency millions of dollars. "Compliance is the key to

avoiding violations and penalties. If DEP is given a Notice of Violation (NOV), I'll compile the facts and if the allegations are accurate, then, through negotiations, the NOV will get resolved. If monetary penalties are involved, I'll seek a reduction in the amount, ultimately saving money for the agency and for the people of New York," said Matthew.

Matthew started at DEP in April 2009 and since then he has met interesting challenges in his work. In 2010 he turned an agreement between the city, state and citizens groups for water quality improvements for Jamaica Bay into a legally binding document. This was a long and deliberate negotiation among the three parties involved. "My role was to make sure that the agency's legal needs were met and to resolve the issues in a timely and pragmatic fashion," Matt said. This work helped bring about the First Amended Nitrogen Consent Judgment to improve the overall quality in Jamaica Bay.

When not at the office, Matt also has a very busy time these days with a newborn and a three year old at home. If he has time to spare, he reads a book or goes for a bike ride in Prospect Park.

Out of the Archives



The photograph shows construction of the 100 million gallon storage tanks in Silver Lake Park, Staten Island on April 9, 1970. The tanks were part of the larger "Richmond Project," designed to greatly increase the Staten Island water supply based upon projections of population growth due to the completion of the Verrazano Bridge. While the projections turned out to overestimate the population increase (the population of Staten Island in 2000 was approximately 440,000, as opposed to the 700,000 projected in 1960), there is no doubt that the borough needed more water than the two existing pipelines could provide. The tanks were covered in order to protect the water from pollution, particularly the goose droppings that plagued the existing Silver Lake Reservoir. In addition, the sub-surface design allowed the Department of Parks to maintain the site as a useable and aesthetically pleasing public space.

Press Box

"The government is looking to plug homeowners' biggest leaks. ... Last year, 3,508 unfortunate homeowners learned the hard way that they are responsible for fixing pipes hooked up to the city's system, even if the leak occurs in the middle of the street." - NY Post story [on DEP's proposed voluntary insurance program for property owners to cover repairs to service line leaks](#)

(One Size Does Not Fit All... continued)

Order on Consent with the New York State Department of Environmental Conservation (DEC) in 2005 to manage combined sewer overflow (CSO) events into the city's waterways. Among other investments, this consent order has tasked DEP with submitting waterbody/watershed facility plans for 18 waterbodies in NYC; upgrading existing parts of the sewer system and wastewater treatment plants; constructing new parts of the sewer system; and developing Long Term Control Plans that may include other CSO controls. Under this consent order, the city is required to invest billions of dollars to manage CSOs without considering other pressing needs first. Recently, DEP has been working with its regulator to replace this costly program with an alternative green infrastructure plan that would cost the city \$2.4 billion less with better results for our waterways.

Over the past year DEP has begun to advocate for a shift from a top-down model of state and federal regulation to a more collaborative approach that fosters creative solutions to tough challenges. This cooperative approach can save all parties lots of money in legal fees, compliance costs, and time, and can

result in more efficient capital allocations to meet public needs. We know that this type of collaboration can work.

For example, in 2010, DEP, DEC, and the Natural Resources Defense Council collectively agreed to improve the overall water quality in Jamaica Bay and its surrounding watershed without resorting to legal action. As a result, DEP agreed to invest \$100 million in nitrogen control upgrades at contributing wastewater treatment plants and \$15 million to restore surrounding marshlands.

DEP is committed to a collaborative approach with our regulators and we are making good on the goal set forth in *Strategy 2011-2014* to engage them in proactive regulatory review. Toward that end, DEP sent a letter to EPA Administrator **Lisa Jackson** during the agency's periodic, retrospective review of existing regulations under Executive Order 13563 [link](#). We are hopeful that EPA is receptive to our suggestions and we look forward to them embracing our belief that comprehensive environmental policy realizes that collaborating with its urban partners is crucial to achieving nationwide, long-term sustainability.

Take Our Daughters and Sons to Work Day

On Thursday, April 28, people in government, business and the non-profit sector throughout the nation will once again come together in a unique effort called "Take Our Daughters and Sons to Work Day" for children between the ages of 8 – 18.

If you would like to register your child please follow this link [link](#). If you would like more information about the day please follow this link [link](#).

We welcome your feedback! To submit an announcement or suggestion, please email us at: newsletter@dep.nyc.gov. [link](#)