

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)
)
 and)
)
 THE STATE OF NEW YORK,)
)
 Plaintiffs,)
)
 v.)
)
 THE CITY OF OSWEGO, NEW YORK,)
 A Municipal Corporation,)
)
 Defendant.)
 _____)

Civil Action No.

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and Plaintiff State of New York (“State”) (collectively, the “Plaintiffs”), filed a complaint in this action (“Complaint”) concurrently with this Consent Decree, alleging that Defendant, the City of Oswego, New York (“City”), violated and is violating Section 301(a) of the Clean Water Act (“Act”), 33 U.S.C. § 1311(a), in connection with unpermitted discharges from the west side of the City’s publicly owned treatment works.

The City, which has a population of approximately 18,000, owns and operates a “publicly owned treatment works” (“POTW”), as defined at 40 C.F.R. § 403.3, part of which is located on the east side of the Oswego River (“East Side System”), and the remainder of which is located on the west side of the River (“West Side System”). The East Side System serves approximately 8,700 people, including citizens of Oswego’s east side and certain surrounding communities. The West Side System services approximately 10,000 people, including citizens of Oswego’s west side and certain surrounding communities. On April 14, 2004, the City and the New York State Department of Environmental Conservation entered into an Administrative Consent Order (No. R7-20040316-16) resolving claims that the City violated Section 17-0803 of the New York Environmental Conservation Law, and Section 751.1 of Title 6 of the New York Code of Rules and Regulations at the East Side System (“East Side Order”). The East Side Order was modified on February 27, 2006. Pursuant to the modified East Side Order, the City paid a civil penalty of \$10,000 for past violations of the Act in the East Side System and implemented corrective measures in that system, at a cost estimated by the City of approximately \$16,100,000. The above-captioned action addresses violations in the West Side System only.

The Complaint in this action seeks injunctive relief and civil penalties, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§1319(b) and (d), for the discharge of pollutants into navigable waters of the United States from the City's West Side System, in violation of Section 301(a) of the Act, 33 U.S.C. §1311(a). The State has been joined as a party to this action pursuant to Section 309(e) of the Act, 33 U.S.C. §1319(e). In addition, the City has violated and is violating several provisions of the New York State Environmental Conservation Law ("ECL"), including sections 17-0701 and 17-0803, due to the unpermitted discharges from the West Side System.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and 505(a) of the Act, 33 U.S.C. §§ 1319(b) and 1365(a), and over the Parties. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over the state law claims asserted by the State. Venue lies in this judicial district pursuant to Sections 309(b) and 505(c) of the Act, 33 U.S.C. §§ 1319(b), 1365(c), and 28 U.S.C. §§ 1391(b), 1395(a), because the City is located in this judicial district and because the causes of action alleged in the Complaint are alleged to have occurred in this judicial district. For

purposes of this Decree, or any action to enforce this Decree, the City consents to the Court's jurisdiction over this Decree or such action, and over the City, and consents to venue in this judicial district.

2. For purposes of this Decree, the City agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), the New York State Environmental Conservation Law, Article 17, and accompanying regulations set forth at 6 NYCRR Part 750.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the Plaintiffs, and upon the City and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the West Side System, or any portion thereof, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of the Decree are implemented. At least 30 days prior to any such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA, the United States Department of Justice, and the State, in accordance with Section XV (Notices). Any attempt to transfer ownership or operation of the West Side System, or any portion thereof, without complying with this Paragraph constitutes a violation of this Decree.

5. The City shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. The City

shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, the City shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

7. All plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Consent Decree, or resulting from the activities required by this Decree, shall have the objective of ensuring that the City achieves and maintains for the term of this Decree full compliance with the Act, and its objectives, the State water pollution control laws, all applicable federal and state regulations, and the terms and conditions of the City's State Pollutant Discharge Elimination System Permit No. NY-0029106 (the "SPDES Permit") for the West Side System, including, without limitation, elimination of all Sanitary Sewer Overflows ("SSOs") and elimination or control of all Combined Sewer Overflows ("CSOs") in accordance with EPA's CSO Policy.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "City" shall mean the City of Oswego, New York, the Defendant in the above-captioned action. Unless otherwise specified, reference to locations in this Decree are to locations within the City on the west side of the Oswego River.

b. "Combined Sewer Overflow" or "CSO" shall mean an overflow, spill, or release of wastewater from the Combined Sewer System ("CSS") within the City's West Side System.

This term shall include:

i. discharges to waters of the State or United States from the CSS; and
ii. any release of wastewater from the CSS to public or private property (including backups into public or private buildings or other private property) that does not reach waters of the United States or the State.

c. "Combined Sewer System" or "CSS" shall mean that portion of the City's wastewater collection and transmission system ("WCTS") which is designed to collect and transmit municipal sewage (including domestic, commercial and industrial wastewaters), combined with stormwater. The City's CSS is separate and distinct from its Sanitary Sewer System, or SSS, defined below.

d. "Complaint" shall mean the complaint filed jointly by the United States and the State in the above-captioned action.

e. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices hereto (listed in Section XXIV), including any amendments thereto.

f. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Decree, where the last day would fall on a Saturday,

Sunday, or federal holiday, the period shall run until the close of business on the next working day.

- g. "DEC" shall mean the New York State Department of Environmental Conservation and any of its successor departments or agencies.
- h. "Effective Date" shall have the definition provided in Section XVI.
- i. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- j. "EFMF" shall mean the West Side System's Excess Flow Management Facility and its components, including the "Swirl Concentrator," located near the intersection of West First Street and West Schuyler Street.
- k. "Excessive I/I" shall mean "excessive infiltration / inflow" as that term is used in 40 C.F.R. § 35.2120.
- l. "Force Main" shall mean a pipe that receives wastewater from the discharge side of a pump and conveys the wastewater under pressure.
- m. "Gravity Sewer Line" shall mean a pipe that receives and contains wastewater and conveys the wastewater normally not under pressure or with any assistance other than the influence of gravity.
- n. "Infiltration" shall mean water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes, as provided in 40 C.F.R. § 35.2005(b)(20).

o. "Inflow" shall mean water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross-connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage, as provided in 40 C.F.R. § 35.2005(b)(21).

p. "Interest" shall mean interest at the rate specified in 28 U.S.C. § 1961. Unless otherwise stated, the applicable rate of interest shall be the rate in effect at the time the interest accrues.

q. "I/T" shall mean the total quantity of water from Infiltration and Inflow without distinguishing the source.

r. "LTCP" shall mean a Long-Term Control Plan within the meaning of EPA's "Combined Sewer Overflow Control Policy," 59 Fed. Reg. 18688, April 19, 1994 ("CSO Policy").

s. "Oswego River" shall mean the river flowing from the confluence of the Oneida River and the Seneca River, through the City of Oswego, into Lake Ontario.

t. "Oswego River Interceptor" or "ORI" shall mean a series of pipes, extending 5,600 feet along the western bank of the Oswego River, from West First Street at Ellen Street to the EFMF. The interceptor was constructed in the early 1980s to intercept sewage and stormwater flowing over and through the CSS before they discharge to the Oswego River. Flows through the interceptor travel northerly, through 18-inch pipes at the southern, Ellen Street end of the interceptor, through two 36-inch pipes for approximately 1,700 feet beneath the City's west

side river walk park, through one 54-inch pipe, and into the EFMF. The interceptor captures and transports all regular (non-overflowing) CSS flows to the EFMF.

u. "Outfall No. 002" shall mean the outfall from the EFMF, as described more particularly in the City's SPDES Permit.

v. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral, unless specified otherwise.

w. "Parties" shall mean the United States, the State, and the City.

x. "Plaintiffs" shall mean the United States and the State.

y. "Prohibited CSO" shall mean a CSO that has not been authorized pursuant to the City's SPDES Permit.

z. "Pump Station" shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that pump station.

aa. "Sanitary Sewer Overflow" or "SSO" shall mean an overflow, spill, or release of wastewater from or caused by the Sanitary Sewer System ("SSS") within the City's West Side System. This term shall include:

i. discharges to waters of the State or United States from the SSS; and

ii. any release of wastewater from the SSS to public or private property (including backups into public or private buildings or other private property) that does not reach waters of the United States or the State.

bb. "Sanitary Sewer System" or "SSS" shall mean all portions of the City's WCTS that are not part of its Combined Sewer System, or CSS, defined above.

cc. “Section” shall mean a portion of this Decree identified by a roman numeral, unless specified otherwise.

dd. “SPDES Permit” shall mean State Pollutant Discharge Elimination System permit number NY-0029106 issued to the City pursuant to Title 8 of Article 17 of the Environmental Conservation Law of New York State and Section 402 of the Act, 33 U.S.C. § 1342, for the WWTP and any future extended, modified, or reissued permit therefor.

ee. “State” shall mean the State of New York.

ff. “WCTS” shall mean the City’s west side combined and sanitary wastewater collection and transmission system (*i.e.*, CSS and SSS), including all pipes, interceptors, Force Mains, Gravity Sewer Lines, lift stations, Pump Stations, manholes and appurtenances thereto, owned or operated by the City, and which are located, or connected to system components located, west of the center of the Oswego River.

gg. “West Side System” shall mean the “publicly owned treatment works,” as defined at 40 C.F.R. § 403.3, located west of the center of the Oswego River, owned or operated by the City. The West Side System is separate and distinct from the City’s “East Side System,” located east of the center of the Oswego River. The West Side System is comprised of the WWTP and the WCTS. Unless otherwise stated, references in this Decree to components of a municipal wastewater treatment system and to a collection and transmission system should be assumed to be references to components of the City’s West Side System.

hh. “WWTP” shall mean the City’s West Side wastewater treatment plant, including all of its components, located at First Avenue and West Schuyler Street, Oswego, New York 13126.

ii. "Work" shall mean all activities the City is required to perform under this Decree, except those required by Paragraphs 69 and 70 (regarding retention of records).

V. CIVIL PENALTY

9. Within 30 days after the Effective Date of this Decree, the City shall pay a total of \$99,000 as a civil penalty. The City shall make payment of the civil penalty as follows:

a. Payment of \$49,500 of the civil penalty shall be in satisfaction of the United States' claims for civil penalties alleged in the Complaint. The United States' payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to the City, following lodging of the Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of New York. At the time of payment, the City shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-08609 and the civil action number of this case) to the United States in accordance with Section XV of this Decree (Notices).

b. Payment of \$49,500 of the civil penalty shall be in satisfaction of the State's claims for civil penalties alleged in the Complaint. The State's payment shall be made by certified or bank check made payable to the "Department of Environmental Conservation," which shall be forwarded to the Department of Environmental Conservation, the Office of General Counsel, 625 Broadway, 14th Floor, Albany, NY 12233-5500, attention: Elissa Armater. Copies of the payment check and any transmittal documentation shall be sent to the State in accordance with Section XV (Notices).

VI. COMPLIANCE REQUIREMENTS

10. The City shall implement the projects identified in this Section VI, and in Appendix A of this Decree. The City shall implement all such measures in a timely manner, in accordance with all schedules required hereunder or otherwise approved by EPA and DEC, including without limitation the schedule set forth in Appendix A.

11. **Oswego River Interceptor Cleaning.** Commencing on July 1, 2010, and at least once per year thereafter, the City shall inspect the ORI. Each inspection shall include, at a minimum, four measurements of the depth of accumulated debris and other solids within the ORI: two in different, representative locations within the dual 36-inch diameter portion, and two in different, representative locations within the single 54-inch diameter portion of the ORI. If any of those measurements reveal that debris and other solids have accumulated to a depth of four or more inches in the 36-inch section or six or more inches in the 54-inch section, then the City shall clean the entire ORI, including without limitation the removal of all accumulated debris and solids.

12. **Disinfection**

a. By May 1, 2010, the City shall submit to DEC for review and approval, in accordance with Section VIII (Approval of Deliverables), an engineering report ("Disinfection Report") for the disinfection of any wastewaters (including sanitary sewage and/or storm water) discharged from Outfall No. 002, from June 1 through September 31 of each year ("Seasonal Disinfection"), from 2011 through 2021.

b. The Disinfection Report shall:

- i. consider alternatives for achieving Seasonal Disinfection in a manner that meets the effluent limits for Outfall No. 002, set forth in the SPDES Permit;
- ii. select one such alternative for implementation;
- iii. explain the reasons for the selection; and
- iv. propose a deadline for submission of the engineering plans and specifications necessary for implementing the selected alternative.

c. Upon approval by DEC, the Disinfection Report shall be incorporated by reference as if set forth fully in this Decree. The City shall implement the Disinfection Report approved by DEC, in accordance with the schedule therein.

d. If the City wishes to terminate Seasonal Disinfection, it shall comply with the following procedures:

- i. The City shall fully implement the approved Disinfection Report, pursuant to subparagraph (c) above.

- ii. Health Report. Within 60 days after meeting the requirements of Paragraph 25(d)(vi) (CSO Control Measures), but in no event later than November 1, 2021, the City shall submit to DEC for approval, pursuant to Section VIII (Approval of Deliverables), a report demonstrating that all applicable WQS have been met and that there is no public health need or aquatic health need for disinfection ("Health Report"), and shall send a copy of the Health Report to EPA pursuant to Section XV (Notices).

- iii. SPDES Permit Modification. If DEC approves the Health Report pursuant to subparagraph (d)(ii) above, City shall submit to DEC an application for a modification of the

SPDES Permit that eliminates all disinfection requirements in the SPDES Permit. The City understands that, in order for the State to issue a modified SPDES Permit, the State must provide the public with notice and an opportunity for comment or hearing regarding the requested SPDES Permit modification and consider any public comments timely submitted during the public comment period, in accordance with applicable State law.

iv. If DEC approves the City's application for a SPDES Permit modification pursuant to subparagraph (d)(iii) above, the City shall submit to DEC for review and approval, in accordance with Section VIII (Approval of Deliverables), a request for termination of Seasonal Disinfection ("Disinfection Termination Request"), certifying that the procedures set forth in subparagraphs (d)(i)-(iii) above have been followed and enclosing all supporting documentation.

e. The City shall continue Seasonal Disinfection unless and until DEC issues a written approval of the City's Disinfection Termination Request in accordance with Section VIII (Approval of Deliverables). If and when DEC issues such written approval, all disinfection requirements in this Consent Decree shall terminate.

13. **Catch Basin Inflow Elimination.** As soon as practicable, but no later than November 1, 2010, the City shall eliminate all inflow of stormwater or other flows to the SSS from the catch basins at the following locations: Fifth Avenue Storm Sewer Extension; West Erie Street Extension at Singleton Street; West Sixth Storm Sewer Extension from Erie to Albany Street; West Seventh Catch Basin Redirect at Niagara Street; and Hart Street Extension to Tallman Street, as depicted on the map attached hereto as Appendix B.

14. **Flow Monitoring**

a. From the date of signature of this Decree through November 1, 2010, the City shall, at a minimum, monitor the following flows within the West Side System using flow monitoring devices located at:

- i. the manholes located on the walkway by the Oswego River near the intersection of Water Street and Market Street (“Riverwalk Manholes”); and
- ii. the manholes, vaults and other components of the WCTS located near the intersection of West Schuyler Street and First Avenue, immediately prior to the headworks of the WWTP (“WWTP Manholes”).

b. By December 31, 2010, the City shall install, and continuously thereafter the City shall operate, flow monitoring devices that monitor, at a minimum, total flow volume, rate, and duration for each and every SSO and CSO from the West Side System, including without limitation overflows from:

- i. the Riverwalk Manholes; and
- ii. the manholes, vaults and other components of the WCTS located near the intersection of West Schuyler Street and First Avenue, immediately prior to the headworks of the WWTP (“WWTP Manholes”).

All results of the flow monitoring required pursuant to this Paragraph shall be included in the Quarterly Reports required pursuant to Section VII.

15. **Public Notification**

a. The public shall be adequately informed of the City's discharges from the WCTS, the impact of those discharges on receiving waters and all actions to control or eliminate such discharges, including without limitation the posting of warning signs, as specified below.

b. **Warning Signs**

i. By March 31, 2010, the City shall post, and continuously thereafter the City shall maintain, signs within 10 feet of each and every SSO and CSO discharge point within the West Side System, including without limitation:

- (1) the Riverwalk Manholes;
- (2) the Gardenier Creek discharge point into Lake Ontario; and
- (3) the EFMF.

ii. Each such sign:

(1) shall be in substantially the same form as one of the signs attached hereto as Appendices C and D; provided, however, that the sign at Appendix C shall be used for the Riverwalk Manholes and the EFMF, and the sign at Appendix D shall be used for the Gardenier Creek discharge point into Lake Ontario;

- (2) shall measure at least 18 inches tall and 24 inches wide;
- (3) shall be made of a durable, weatherproof material;
- (4) shall be readily visible to the unaided eye from a distance of 100

feet; and

(5) shall, if located within 100 feet of a water body, be visible both from the water and from the land.

iii. By January 31, 2010, the City shall submit to EPA and DEC for review and approval, in accordance with Section VIII (Approval of Deliverables), a prototype of the signs to be posted pursuant to this Paragraph.

iv. Notwithstanding subparagraph (i), the City may remove any such sign when the following conditions are met:

(1) there has been no discharge from the SSO/CSO discharge point associated with the sign for a continuous period of 365 days; and

(2) the City has submitted to EPA and DEC a written certification that there has been no such discharge.

v. In the event that, after a sign has been removed pursuant to subparagraph (iv) above, there is a discharge from the subject SSO/CSO discharge point, the City shall, within 15 days following the discharge, re-post the sign and maintain the sign as required above.

vi. In the first Quarterly Report submitted pursuant to Section VII after the completion date for the posting of the signs required by this Paragraph, an authorized representative of the City shall certify that all signs required by this Paragraph 15(b) have been posted and remain in place. With that report, the City shall submit to EPA and DEC photographs clearly depicting each posted sign and its location relative to the corresponding discharge point. With each photograph, the City shall submit to EPA and DEC a description of the sign's location by street address, intersection, or Global Positioning System ("GPS") coordinates.

16. **Funding**

a. Although the City intends to seek federal and state funding assistance, compliance with the requirements of this Decree is not contingent upon or conditioned on the receipt of any

federal or state funds. In addition, the lack of federal or state funds, or the time required for processing any applications for such funds for use in financing compliance with the requirements of this Decree, shall not excuse any failure to timely comply with this Decree.

b. By March 1, 2010, and continuously thereafter until the date of termination of this Decree pursuant to Section XXII, the City shall retain a qualified expert in municipal finance to assist the City in identifying and securing sufficient funding for compliance with this Decree, including without limitation the submission of timely and complete applications for federal or state grants, loans, or other available types of funding. Within 10 days after retaining such an expert, the City shall notify the Plaintiffs of the identity (including name, address, title, company, and phone number) of the expert.

c. No later than March 1, 2012, the City shall establish an "Enterprise Fund" for sewer use fees. The City shall deposit into this Enterprise Fund all sewer use fees collected by the City. This Enterprise Fund shall be dedicated initially to the funding of work required under this Decree and, if any funds remain in the Fund after completion of such work, to other projects related to sewer service by the City. At least once every year thereafter, the sewer use fees shall be adjusted so that the amount in the Enterprise Fund shall equal or exceed expected sewer construction, operation and maintenance expenses over the following year.

17. **Sanitary Sewer Evaluation Survey**

a. The City shall complete a Sanitary Sewer Evaluation Survey ("SSES") for the one-third of the City's SSS with the highest contribution of I/I ("High-I/I Section"), pursuant to the approved SSES Report required by subsection (b) below. The City shall perform the SSES in accordance with sound engineering practice and all applicable EPA policy and guidance

documents, including without limitation: the *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 1994; *A Guide to Short Term Flow Surveys of Sewer Systems*, WRC Engineering (Undated); and the National Association of Sewer Service Companies (“NASSCO”) “Manual of Practice”; and any amendments thereto.

b. By March 1, 2010, the City shall submit to EPA and DEC for review and approval, in accordance with Section VIII (Approval of Deliverables), an engineering report (“SSES Report”) setting forth the results of the SSES, analyzing alternatives and selecting corrective actions, and proposing a schedule of implementation deadlines for key milestones, including submission of engineering plans and specifications, and construction start and completion dates for all selected corrective actions. The deadline for final completion shall be no later than November 1, 2014. Upon its approval by EPA and DEC, the City shall implement the SSES Report approved by EPA and DEC in accordance with the schedule therein. The approved SSES Report shall be incorporated by reference as if set forth fully in this Decree.

18. **Privately Owned Portion of Lateral.** If at any time, the City discovers, through investigation, notification, or otherwise, that a privately owned portion of a customer service connection lateral is a source of Excessive I/I that causes or contributes, or is likely to cause or contribute, to an SSO, the City, within 90 days of that discovery, shall notify the owner(s) of the lateral that the lateral is a source of Excessive I/I and shall take action, consistent with the City’s legal authority, to repair, rehabilitate, or replace the lateral so it is no longer a source of Excessive I/I. In its Quarterly Reports, submitted pursuant to Section VII, the City shall identify the dates of any such notices to owners of privately owned portions of customer service

