

**BUREAU OF PUBLIC WORKS
SPECIAL MEETING**

Remote Meeting
Tuesday, April 27, 2021

Present: Commissioners Andrew Adil, John Avedisian, Richard Bush, David Drake, James Healy, Allen Hoffman, Byron Lester, Maureen Magnan, Raymond Sweezy, Alvin Taylor, Calixto Torres, Richard W. Vicino and District Chairman William DiBella (13)

Absent: Commissioners Donald Currey, Diane Lewis, Alphonse Marotta, Dominic Pane, Bhupen Patel and James Woulfe (6)

Also

Present: Scott W. Jellison, Chief Executive Officer
Christopher Stone, Assistant District Counsel
John S. Mirtle, District Clerk
Christopher Levesque, Chief Operating Officer
Kelly Shane, Chief Administrative Officer
Sue Negrelli, Director of Engineering
Tom Tyler, Director of Facilities
Rob Constable, Manager of Treasury
Shereese Rodgers, Senior Financial Analyst
Lisa Remsen, Manager of Budget and Analysis
Carrie Blardo, Assistant to the Chief Operating Officer
Victoria S. Escoriza, Executive Assistant
Julie Price, Professional Level Associate
Jeffrey Knight, Counsel, Pillsbury Winthrop Shaw Pittman
David Silverstone, Independent Consumer Advocate

CALL TO ORDER

The meeting was called to order by Chairman Vicino at 1:32 PM

PUBLIC COMMENTS RELATIVE TO AGENDA ITEMS

No one from the public appeared to be heard.

APPROVAL OF MEETING MINUTES

On motion made by Commissioner Hoffman and duly seconded, the meeting minutes of March 10, 2021 were approved.

SEWAGE SLUDGE INCINERATORS CONSENT DECREE

At 1:33 P.M., Chairman Vicino requested an executive session to discuss a pending consent decree.

On a motion made by Commissioner Hoffman and duly seconded, the Bureau of Public Works entered into executive session to discuss pending litigation and a consent decree.

Those in attendance during the executive session:

Commissioners Andrew Adil, John Avedisian, Richard Bush, David Drake, James Healy, Allen Hoffman, Byron Lester, Maureen Magnan, Raymond Sweezy, Alvin Taylor, Calixto Torres, Richard W. Vicino and District Chairman William DiBella; Chief Executive Officer Scott W. Jellison; Chief Operating Officer Christopher Levesque, Chief Administrative Officer Kelly Shane; Director of Engineering Susan Negrelli, Attorneys Christopher Stone, John S. Mirtle and Jeffrey Knight of Pillsbury Winthrop Shaw Pittman.

RECONVENE

At 2:31 P.M., Chairman Vicino requested to come out of executive session and on motion made by Commissioner Torres and duly seconded, the Bureau of Public Works came out of executive session and reconvened. No formal action was taken.

To: Bureau of Public Works for consideration on April 27, 2021

The Clean Air Act required the EPA to create emission limits and standards for Sewage Sludge Incinerators (SSIs). The EPA drafted guidelines and emissions standards for “new SSIs” and “existing SSIs.” The emissions limits are significantly stricter for “new” units. An existing SSI unit is defined as construction commenced before October 14, 2010. The Hartford Water Pollution Control Facility’s (HWPCF) SSI units were constructed in the 70s and would qualify as existing. If an existing SSI unit is “modified” i.e. over the life of the SSI unit the owner spends at least 50% of the original construction costs on improvements or upgrades, it is no longer considered an existing SSI and instead falls under the new SSI regulations.

In 2010, the EPA released a proposed rule to implement the emissions standards with an effective date of March 2016. The National Assoc. of Clean Water Agencies (NACWA) sued EPA over the proposed rule in 2011. In 2013 the DC Circuit Court of Appeals remanded portions of the rule directing EPA to explain portions of the rulemaking and emissions limits establishment process but the Court allowed the rule and emissions limits to remain in effect. *NACWA v. EPA*, 734 F.3d 115 (2013)

Since the rule went into effect in early 2016, the District has been engaged in debate with the EPA over whether the District’s SSI units are required to comply with the “existing” emissions limits or the more stringent “new” emissions limits. The disputed issues revolve around whether work performed at the HWPCF since the 1970s should be counted against the 50% modification threshold set in the rule. The EPA indicated that it believes the District’s SSI units

exceed the 50% modification threshold and are therefore regulated by the “new” emission limits. The District provided substantial documentation and support for its position that some of the construction projects or physical components the EPA is including in its modification analysis should not be included under the SSI Rule. EPA issued a Notice of Violation against the District on January 12, 2017.

As currently designed, the District’s SSI units have historically demonstrated consistent compliance with the emissions limits for “existing” SSI units and also largely met the “new” limits for all controlled pollutants except for one, carbon monoxide. In order to avoid costly upgrades required to comply with the “new” emissions limits, the District repeatedly tried to convince the EPA for years that its modification analysis was flawed and the District’s SSI units rightly fall under the “existing” emission limits. Ultimately, EPA did not agree and notified the District that if the District did not agree to enter into a Consent Decree to bring the SSI units into compliance with the regulations, EPA would refer this issue to the Department of Justice for enforcement.

Staff briefed the Bureau of Public Works on this potential enforcement action and Consent Decree on September 30, 2020. The terms and conditions of a Consent Decree have been negotiated with EPA and DOJ since that time. If approved, the Consent Decree requires compliance by the District’s SSI units with the “new” emission limits and regulations by April 30, 2022 and payment of a civil penalty in the amount of \$298,000.

It is **RECOMMENDED** that it be

VOTED: That the Bureau of Public Works recommends to the District Board passage of the following resolution:

RESOLVED: That the Chief Executive Officer of The Metropolitan District, Scott W. Jellison, on behalf of the District, hereby is authorized, empowered and directed to enter into a sewage sludge incinerator standards Consent Decree with the United States Environmental Protection Agency and United States Department of Justice.

Respectfully submitted,



Scott W. Jellison
Chief Executive Officer

Final Draft 4/15/2021
Settlement Confidential – For Compromise Purposes Only

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 90-5-2-1-12047
)	
THE METROPOLITAN DISTRICT,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, for injunctive relief and civil penalties pursuant to Section 113(b)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b)(2), alleging that Defendant, The Metropolitan District (“District” or “Defendant”), violated sewage sludge incineration (“SSI”) standards at 40 C.F.R. Part 60, Subpart LLLL (“standards of performance for new SSI units” or “Subpart LLLL”), and Sections 111 and 129 of the CAA, 42 U.S.C. §§ 7411 and 7429.

WHEREAS, the Complaint alleges that Defendant violated the above-listed federal environmental statutes and regulations at the District’s owned and operated Hartford Water Pollution Control Facility at 240 Brainard Road in Hartford, Connecticut (the “Facility”). The Facility is designed to treat sewage sludge.

WHEREAS, Defendant denies the violations alleged in the Complaint and maintains that it has been in compliance with the CAA, and that it is not liable for civil penalties or other injunctive relief.

WHEREAS, the objectives of the Parties in entering into this Consent Decree are to protect public health, public welfare, and the environment by having the Defendant perform the actions described below, and to ensure that the Defendant achieves and maintains compliance with the CAA, applicable state and local laws, and the terms and conditions of applicable permits.

WHEREAS, 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 between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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NOW THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law, 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 under 28 U.S.C. §§ 1331, 1345, and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and over the Parties. Venue lies in this judicial district under Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the alleged violations took place in this judicial district. Solely for purposes of this Consent Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action to enforce this Decree, and over Defendant, and consents to venue in this judicial district.

2. Solely for purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted under Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

3. Notice of commencement of this action has been given to the State of Connecticut, specifically the Connecticut Department of Energy and Environmental Protection, by the United States.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

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5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant 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 Region 1, the United States Attorney for the District of Connecticut, and the United States Department of Justice in accordance with Section XIII (Notices) of this Decree. Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

6. Defendant 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 Decree. Defendant shall condition any such contract to provide that performance of such work shall be in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant 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. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CAA, or in regulations promulgated pursuant to the CAA, shall have the meanings assigned to them in the CAA 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:

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- a. “Business Day” shall mean a day other than a Saturday, Sunday, or federal holiday.
- b. “Complaint” shall mean the complaint filed by the United States in this action.
- c. “Compliance Requirements” shall mean the requirements set forth in Section V (Compliance Requirements), and Appendices A and B attached to this Consent Decree.
- d. “Consent Decree” or “Decree” shall mean this Consent Decree and Appendices A and B attached hereto.
- e. “Day” shall mean a calendar day unless expressly stated to be a Business Day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next Business Day.
- f. “Defendant” shall mean The Metropolitan District located in Hartford County, Connecticut.
- g. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- h. “Effective Date” shall have the definition provided in Section XIV (Effective Date).
- i. “Facility” shall mean the three multi-hearth sewage sludge incinerator units owned and operated by Defendant and located at 240 Brainard Road in Hartford, Connecticut.
- j. “Force Majeure” shall have the definition provided in Paragraph 40 of Section VIII (Force Majeure).

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k. “Interest” shall mean an amount calculated at the rate specified in 28 U.S.C.

§ 1961.

l. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

m. “Parties” shall mean the United States and Defendant.

n. “Section” shall mean a portion of this Decree identified by a Roman numeral.

o. “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

9. Within 45 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of two hundred ninety-eight thousand dollars (\$298,000.00) as a civil penalty, together with Interest accruing from the Effective Date (Section XIV) of this Consent Decree.

10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with written instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Connecticut after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to the Office of District Counsel at legal@themdc.com on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIII (Notices).

11. At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati

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Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIII (Notices); and (iii) to EPA in accordance with Section XIII (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. The Metropolitan District* and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-1-12047.

12. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section IV (Civil Penalty) or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

13. Defendant shall comply with the Compliance Requirements in accordance with the schedules therein. Appendices A and B are incorporated into and are fully enforceable under this Consent Decree.

14. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to Appendices A or B of this Consent Decree or Section V (Compliance Requirements), Section VI (Reporting Requirements), and Section VIII (Force Majeure), EPA shall notify Defendant in writing that EPA: (a) approves the submission; (b) approves the submission upon specified conditions; (c) approves part of the submission and disapproves the remainder; or (d) disapproves the submission.

15. If the submission is approved under Paragraph 14(a), Defendant shall take all actions required by the plan, report, or other item, in accordance with the schedules and requirements of the plan, report, or other item, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 14(b) or (c), Defendant shall, upon written direction from EPA provided in the conditional or partial approval, take all actions required by the approved plan,

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report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute the specified conditions or the disapproved portions, under Section IX (Dispute Resolution) of this Consent Decree.

16. If the submission is disapproved in whole or in part under Paragraph 14(c) or 14(d), Defendant shall, within 45 Days, or such longer period of time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

17. Any stipulated penalties applicable to the original submission, as provided in Section VII (Stipulated Penalties) of this Consent Decree, shall accrue during the 45 Day period or such longer period as the Parties agree to in writing, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission, subject to Defendant's right to invoke Dispute Resolution.

18. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies in accordance with the preceding Paragraphs, subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

19. Permits. Where any Compliance Requirement requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take

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all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section VIII (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

20. Within 15 Business Days following each calendar quarter (January-March, April-June, July-September, October-December) after the Effective Date, Defendant shall submit to EPA progress reports as required by Item 2 of Appendix A until the date Defendant submits an initial compliance report as required by Item 13 of Appendix A. Thereafter, Defendant shall submit to EPA semiannual progress reports within 15 Business Days following each six-month reporting period (January-June, July-December) until termination of this Decree pursuant to Section XVII (Termination). Defendant shall submit a copy of such report to the U.S. Department of Justice and EPA in accordance with Section XIII (Notices). Defendant's reports shall include the following information: all compliance measures taken under this Consent Decree during the previous calendar quarter; milestones in Appendix A completed; problems encountered or anticipated (together with solutions implemented or proposed); status of any applications for permits required to fulfill any Compliance Requirements; and results of any inspections or tests performed, or any repairs made, under this Consent Decree. In order for the Parties to more easily track Defendant's performance of the actions it is obligated to perform under the terms of this Consent Decree, Defendant shall provide, in its status reports, the checklist form attached hereto as Appendix B, in

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which Defendant shall update its progress, during the previous quarter, toward fulfilling the Compliance Requirements.

21. Beginning on the Effective Date, in accordance with the deadlines in 40 C.F.R. § 60.4915(e)(2), until termination of this Decree pursuant to Section XVII (Termination), Defendant shall provide the information required by 40 C.F.R. § 60.4915(e) in a format that complies with the applicable regulations, including, without limitation, 3-hour and 12-hour block averages.

22. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall make a written report to the United States of such violation and its likely duration, within 10 Business Days of the Day that Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent, correct, or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate in good faith the cause of the violation and shall then submit an amendment to the report, including an explanation of the cause (if discovered through its investigation or otherwise) of the violation, within 45 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide any notice required by Section VIII (Force Majeure).

23. Whenever any violation of this Consent Decree or of the applicable requirements of Subpart LLLL, or any other event affecting Defendant's performance under this Decree, or the operation of the Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic mail as soon as possible, but no

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later than 24 hours after Defendant first knew of the violation or event. The notice required under this Paragraph is in addition to the requirements set forth in the preceding Paragraph.

24. All reports and notifications under this Decree shall be submitted to the persons designated in Section XIII (Notices) of this Consent Decree.

25. Each report submitted by Defendant under this Section shall be signed by an official of the Defendant and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

26. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CAA or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

27. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

28. Report to the Court. No later than 24 months after the Date of Entry, and every two years thereafter until termination of this Consent Decree pursuant to Section XVII (Termination), Defendant, in consultation with the United States, shall submit to the Court a report on compliance

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with the requirements of this Consent Decree. The report shall include a recommendation regarding the need for a status conference with the Court. The United States may submit to the Court a response or supplement to Defendant's report to the Court within 60 Days after Defendant submits its report.

VII. STIPULATED PENALTIES

29. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any payment of civil penalties, compliance requirements of this Decree and any work plan or schedule approved under this Decree, and submission of any required reports or notifications, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

30. Late Payment of Civil Penalty. If Defendant fails to pay when due the civil penalty as specified under Section IV (Civil Penalty) of this Decree, Defendant shall pay a stipulated penalty of \$500 per Day for each Day that the payment is late.

31. The following stipulated penalties shall accrue per violation per Day for each violation of a requirement specified in Section V (Compliance Requirements) and Section VI (Reporting Requirements):

Period of Noncompliance Penalty per Violation per Day

1st through 14th Day	\$250.00
15th through 30th Day	\$500.00
31st Day and beyond	\$1000.00

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32. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until such performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Stipulated penalties shall accrue regardless of whether the United States has notified Defendant that a violation of this Consent Decree has occurred.

33. Defendant shall pay any stipulated penalty within 30 Days after receiving the United States' written demand.

34. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

35. a. Stipulated penalties shall continue to accrue as provided in Paragraph 32 during any Dispute Resolution but need not be paid until the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court. Defendant shall pay accrued penalties determined to be owing, together with Interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below. Notwithstanding Paragraph 32 of this Consent Decree, during such judicial review by the Court, stipulated penalties shall not accrue with respect to the disputed violation during the period, if any, beginning on the 60th Day after the Court's receipt of the motion provided for by Paragraph 49, until the date that the Court issues a final decision regarding such dispute.

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c. If either Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with Interest, within 30 Days of receiving the final appellate court decision.

36. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraphs 11 and 12, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

37. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for Interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

38. The payment of penalties and Interest, if any, under this Section shall not alter in any way Defendant's obligations to complete the performance of the requirements of this Consent Decree.

39. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights) of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CAA or regulations thereunder, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violations.

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VIII. FORCE MAJEURE

40. “Force Majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of any of Defendant’s contractors that delays or prevents the full performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. The requirement that Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

41. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Defendant shall provide notice orally or by electronic mail to EPA as soon as possible but no later than within 72 hours of when Defendant first knows that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above

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requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure.

Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or any of Defendant's contractors knew or should have known.

42. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of obligations under this Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

43. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

44. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 40 and 41. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

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IX. DISPUTE RESOLUTION

45. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

46. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen on the date Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the United States shall provide Defendant with written notice of its final decision. The final decision of the United States shall be considered binding under the terms of this Consent Decree unless, within 30 Days after receipt by Defendant of the United States' notice of its final decision, Defendant invokes the formal dispute resolution procedures as set forth below.

47. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States its written Statement of Position regarding the matter in dispute. Defendant's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant; and may specify

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the Defendant's position as to whether formal dispute resolution should proceed under Paragraph 51(a) or 51(b).

48. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The Director of the Enforcement and Compliance Assurance Division, EPA Region 1, will issue a final decision resolving the matter in dispute which shall include, but need not be limited to, the factual data, analysis, and documentation that are the basis(es) of the decision. The decision of the Director of the Enforcement and Compliance Assurance Division shall be binding upon the Defendant, subject only to the right to seek judicial review, in accordance with the following Paragraph. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted by the Parties. Where appropriate, EPA may allow submission of supplemental statements of position by the Parties.

49. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 Days of receipt of the final decision by the Director of Enforcement and Compliance Assurance Division, Region 1, pursuant to Paragraph 48. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. Defendant's motion to the Court shall not raise new

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issues or submit new facts that were not previously presented to the United States during formal dispute resolution.

50. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

51. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 47 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 47, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

52. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Except as set forth in Paragraph 35.b., stipulated penalties with respect to the disputed matter shall continue to accrue from the first

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day of nonperformance, but payment shall be stayed pending resolution of the dispute, as provided in Paragraph 35. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

53. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
 - b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
 - c. obtain samples and, upon request, splits of any samples taken by either Defendant or its representatives, contractors, or consultants;
 - d. obtain documentary evidence, including photographs, video and similar data;
- and/or
- e. assess compliance with this Consent Decree.

54. Upon request, Defendant shall provide EPA or its authorized representative splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA. Upon request, EPA shall provide Defendant with copies of photographs taken at or of the Facility.

55. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic

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form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information retention requirement shall apply regardless of any contrary corporate, municipal or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

56. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph within its possession or control and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA, subject to the procedures set forth in 40 C.F.R. Part 2. Defendant may also assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege or doctrine recognized by federal law. If Defendant asserts such a claim, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege or other claim asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

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57. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2. Defendant may make no claim of business confidentiality or protection regarding any air emission records that Defendant is required to create or generate pursuant to this Consent Decree.

58. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

59. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violation.

60. The United States reserves all legal and equitable remedies available to enforce the provisions of the Consent Decree, except as expressly stated in Paragraph 59. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal laws, regulations or permit conditions, except as expressly specified in Paragraph 59. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public

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health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

61. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Defendant shall not assert, and may not maintain, any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 59 of this Section.

62. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, or any other provisions of federal, state, or local laws, regulations, or permits.

63. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

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64. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

65. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. NOTICES

66. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: Anne.Thidemann@usdoj.gov
eescdcopy.enrd@usdoj.gov
 RE: DJ# 90-5-2-1-1-12047

As to the United States by mail: EES Case Management Unit
 Environment and Natural Resources Division
 U.S. Department of Justice
 P.O. Box 7611
 Washington, D.C. 20044-7611

As to EPA by mail: Director
 Enforcement and Compliance Assurance Division
 EPA Region 1
 5 Post Office Square, Suite 100
 Boston, Massachusetts 02109-3912

As to EPA by email: Tahani Rivers, Attorney-Advisor
rivers.tahani@epa.gov
 Christine Sansevero, Chief, Air Compliance Section
sansevero.christine@epa.gov

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As to Defendant by e-mail: Office of District Counsel
legal@themdc.com

and

Tom Tyler
ttyler@themdc.com

67. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided in the preceding Paragraph.

68. Notices submitted pursuant to this Section, including electronic mailing, shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

69. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

70. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

71. The terms of this Consent Decree, including Appendices A and B, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

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A change in due dates for Compliance Requirements or any other obligations under this Decree, with the exception of the requirement to meet the December 31, 2021 General Compliance Obligations in Appendix A, Item 1, shall not constitute a material change requiring approval by the Court.

72. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 51, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

73. After Defendant has completed the requirements of Section V (Compliance Requirements), Section VI (Reporting Requirements), and Appendix A of this Decree, has thereafter maintained continuous satisfactory compliance with this Decree for a period of two years, and has paid the civil penalty and any stipulated penalties and Interest as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that the requirements of this Consent Decree have been met, together with all necessary supporting documentation.

74. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

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75. If the United States does not agree that the Decree may be terminated, Defendant may invoke dispute resolution under Section IX (Dispute Resolution). However, Defendant shall not seek dispute resolution of any dispute regarding termination until 30 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

76. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

77. Each undersigned representative of Defendant and the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

78. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail or by electronic mail directed to the persons designated in Section XIII (Notices) of this Consent Decree with respect to all matters arising under or relating to this Consent Decree and to waive the formal

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service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

79. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXI. FINAL JUDGMENT

80. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

XXII. APPENDICES

81. Appendices A and B are attached to and part of this Consent Decree.

Dated and entered this ____ day of _____, 2021.

UNITED STATES DISTRICT JUDGE

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FOR PLAINTIFF UNITED STATES OF AMERICA:

DATE

JOHN B. HUGHES
Assistant United States Attorney
Chief, Civil Division
Office of the United States Attorney, District of
Connecticut
Connecticut Financial Center
157 Church Street
25th Floor
New Haven, CT 06510

DATE

ANNE F. THIDEMANN
Assistant United States Attorney
Office of the United States Attorney, District of
Connecticut
Federal Bar No. ct28028
1000 Lafayette Boulevard, 10th Floor, Bridgeport, CT
06604

JEAN E. WILLIAMS
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

DATE

BRIAN G. DONOHUE
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Ben Franklin Station P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-5413
brian.donohue@usdoj.gov

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DATE

CARL DIERKER
Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square-Suite 100 (Mail Code: 04-6)
Boston, MA 02109-3912

DATE

TAHANI ANN RIVERS
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square - Suite 100 (Mail Code: 04-3)
Boston, MA 02109-3912

OF COUNSEL

TOM OLIVIER
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
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Boston, MA 02109-3912

PROVIDENCE SPINA
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W. (Mail Code: 2242A)
Washington, D.C. 20460

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FOR DEFENDANT THE METROPOLITAN DISTRICT:

DATE

SCOTT W. JELLISON
Chief Executive Officer
The Metropolitan District
555 Main St.
Hartford, CT 06103

DATE

CHRISTOPHER R. STONE
District Counsel
The Metropolitan District
555 Main St.
Hartford, CT 06103

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Appendix A

1. General Compliance Obligations

No later than April 30, 2022, and in accordance with the schedule set forth in this Appendix A, the Defendant, for all three of its SSIs, shall comply with all applicable requirements of this Consent Decree and of 40 C.F.R. Part 60, Subpart LLLL (“Subpart LLLL”), including but not limited to those cited below.

2. Progress Reports

Defendant shall submit quarterly progress reports within 15 Business Days following each calendar quarter (January-March, April-June, July-September, October-December) via email, as required under Paragraph 20 of this Consent Decree, until Defendant submits an initial compliance report as required by Item 13 of this Appendix A. Thereafter, Defendant shall submit semiannual progress reports within 15 Business Days following each six-month reporting period (January-June, July-December) until termination of this Decree pursuant to Section XVII (Termination). The progress reports shall provide a detailed update on all requirements under this Consent Decree, carried out during the preceding reporting period at the Facility (but should not provide historic or cumulative information, from prior reporting periods, unless relevant to compliance-related activities, required by this Consent Decree, carried out during the immediately preceding period).

3. Training

Defendant shall operate its three SSI units only while a fully trained and qualified SSI unit operator is accessible, with certain regulatorily specified exceptions, who has completed an incinerator operator training course and maintained or renewed

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qualifications, within the requisite time periods as required by 40 C.F.R. §§ 60.4810, 60.4815, 60.4820, 60.4825, 60.4830, and 60.4835.

4. **Control Plan**

On December 1, 2020, Defendant submitted a Control Plan that it asserts reflects the requirements of Subpart LLLL to EPA for review. EPA will approve or disapprove the plan in writing as provided by Paragraph 14 of this Decree. Defendant shall comply with the EPA-approved Control Plan on the date EPA notifies Defendant that the Facility's Control Plan is approved.

5. **Mercury Petition**

On December 1, 2020, the District submitted a Mercury Petition to "...the Administrator for specific operating parameters, operating limits, and averaging periods..." 40 C.F.R. § 60.4855(b). EPA will approve or disapprove the Mercury Petition in writing as provided by Paragraph 14 of this Decree. Defendant shall comply with the EPA-approved Mercury Petition (*see* 40 C.F.R. § 60.4855(b)) on the date EPA notifies Defendant that the Mercury Petition is approved.

6. **Site-Specific Monitoring Plan**

- a. On December 1, 2020, the District submitted the Facility's site-specific monitoring plan ("SSMP") as required by 40 C.F.R. § 60.4880. EPA will approve or disapprove the SSMP in writing as provided by Paragraph 14 of this Decree. Defendant shall comply with the SSMP on the date EPA notifies Defendant that the SSMP is approved.

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- b. The District shall update and resubmit the SSMP if there are any changes or potential changes in monitoring procedures or if there is a process change, as defined in § 60.4930. *See*, 40 C.F.R. § 60.4880(h).

7. **Control Device Inspections**

- a. **Initial Air Pollution Control Device Inspection:** By December 31, 2020, Defendant conducted an initial air pollution control device inspection according to 40 C.F.R. § 60.4900(c) at the Facility and performed any necessary repairs found during the inspection in accordance with the requisite regulatory time frames as required by 40 C.F.R. §§ 60.4875(a), (b).
- b. **Annual Air Pollution Control Device Inspection:** Within 12 months of the initial air pollution control device inspection specified by Item 7.a. above, and annually thereafter, conduct an air pollution control device inspection according to 40 C.F.R. § 60.4900(c) and perform any necessary repairs found during the inspection in accordance with the requisite regulatory time frames as required by 40 C.F.R. §§ 60.4895(a) and (b).

8. **Notification of Performance Test and Site-Specific Test Plan**

Within 60 Days of EPA approval of the SSMP, Defendant shall submit a performance test notification and a site-specific test plan meeting applicable requirements of 40 C.F.R. § 60.4900(a) for each pollutant specified in Table 2 to Subpart LLLL for multiple hearth sewage sludge incineration units. EPA will approve or disapprove the test plan in writing as provided by Paragraph 14 of this Decree.

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9. **Initial Performance Testing**

- a. Within 30 Days of receiving EPA comments on the test plan required in Item 8 above, Defendant shall revise and resubmit the test plan in accordance with EPA's comments or required changes. EPA will approve, approve with conditions, or disapprove the test plan in writing as provided by Paragraph 14 of this Decree.
- b. Within 30 days of the date EPA approves the test plan, Defendant shall hold a pre-test meeting with EPA and schedule the testing date(s). The testing must take place no later than 60 days after the pre-test meeting. *See*, 40 C.F.R. §§ 60.8, 60.4865(a).
- c. Within 60 Days of completing the testing, Defendant must submit a complete test report to EPA. *See*, 40 C.F.R. § 60.4915(i).

10. **Setting Initial Operating Limits**

Defendant shall establish site-specific operating limits during the initial performance test, as required by 40 C.F.R. § 60.4870, provided the test demonstrates compliance. *See*, 40 C.F.R. § 60.4850(a).

11. **Meeting Operating Limits**

Defendant shall meet the site-specific operating limits, upon establishment, when sewage sludge is in the SSI combustion chamber, as required by 40 C.F.R. § 60.4850. *See*, 40 C.F.R. § 60.4890.

12. **Demonstrate Compliance**

- a. By April 30, 2022, Defendant shall meet the emission limits and standards and demonstrate initial and ongoing compliance with the emission limits and

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standards for multiple hearth sewage sludge incineration units specified in Table 2 to Subpart LLLL. *See*, 40 C.F.R. §§ 60.4845, 60.4865, 60.4885.

- b. From the time Defendant conducts its initial performance test until termination of this Consent Decree, if Defendant fails to demonstrate compliance with emission limits for any pollutant as specified in Table 2 to Subpart LLLL, Defendant shall propose measures, in writing, for attaining and demonstrating compliance with the applicable emission limit(s). Defendant shall propose these measures to EPA, in writing, for review and approval, as expeditiously as practicable, but no later than 60 days from knowledge of a failure.
- c. By July 31, 2021, Defendant shall install a carbon monoxide continuous emissions monitoring system specified in 40 C.F.R. § 60.4900(b) and demonstrate compliance with the Subpart LLLL carbon monoxide emission limit using a continuous emissions monitoring system. *See*, 40 C.F.R. § 60.4885(b)(1).

13. Initial Compliance Report

Within 60 days of completing the initial performance test, Defendant shall submit to EPA an initial compliance report containing the information required by 40 C.F.R. § 60.4915(c).

14. Semiannual Deviation Report

Beginning on the Effective Date, in accordance with the deadlines in 40 C.F.R. § 60.4915(e)(2), until termination of this Decree pursuant to Section XVII (Termination), Defendant shall provide the information required by 40 C.F.R.

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§ 60.4915(e) in a format that complies with the applicable regulations, including, without limitation, 3-hour and 12-hour block averages.

15. **Annual Compliance Testing**

Except as provided in 40 C.F.R. §§ 60.4885(a)(3), (e), and (f), following the date that the initial performance test is completed, Defendant shall conduct a performance test for each pollutant as specified in Table 2 to Subpart LLLL on an annual basis (between 11 and 13 calendar months following the previous performance test). *See*, 40 C.F.R. § 60.4885(a). The testing shall be conducted pursuant to 40 C.F.R. § 60.4900(a).

16. **Annual Compliance Report(s)**

Defendant must submit an annual compliance report that includes the items listed in 40 C.F.R. §§ 60.4915(d)(1) through (d)(16). The first annual compliance report is due no later than 12 months following the submission of the initial compliance report, required by Item 13 of this Appendix A. Subsequent annual compliance reports are due no more than 12 months following submission of the previous annual compliance report.

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Appendix B Tracking Checklist Summarizing Consent Decree Compliance Requirements and Deadlines (Update and Submit in Progress Reports)		
Description of Compliance Requirement (CD Paragraph)	Due Date	Due Date Met (Yes, No, Not yet due)?
Meet all 40 CFR Part 60, Subpart LLLL Requirements (App. A, Item 1)	April 30, 2022	
Submit progress reports (App. A, Item 2)	Quarterly from the Effective Date until Defendant submits an initial compliance report; semiannually thereafter until termination of this Decree	
Submit semiannual deviation reports (App. A, Item 14)	Semiannually from the Effective Date until termination of this Decree	
Meet annual operator training requirements (App. A, Item 3)	Effective Date	
Submit Control Plan (App. A, Item 4)	December 1, 2020	Yes
Comply with Control Plan (App. A, Item 4)	Upon EPA approval of the Control Plan	
Submit Mercury Petition (App. A, Item 5)	December 1, 2020	Yes
Comply with Mercury Petition (App. A, Item 5)	Upon EPA approval of the Mercury Petition	
Submit SSMP (App. A, Item 6.a.)	December 1, 2020	Yes
Comply with SSMP (App. A, Item 6.a.)	Upon EPA approval of the SSMP	
Conduct initial and annual air control device inspection and conduct related repairs (App. A, Item 7.a. and 7.b.)	December 31, 2020 and annually thereafter	Yes
Submit performance test notification and test plan (App. A, Item 8)	Within 60 Days after notice of EPA approval of the SSMP	
Revise and resubmit test plan, if required (App. A, Item 9.a.)	Within 30 Days after receiving EPA's test plan comments	
Hold a pre-test meeting with EPA and schedule the testing date(s) (App. A, Item 9.b.)	Within 30 Days after notice of EPA's test plan approval	
Conduct testing (App. A, Item 9.b.)	No later than 60 Days after the pre-test meeting	
Submit a complete test report (App. A, Item 9.c.)	Within 90 Days of test completion	
Set operating limits (App. A, Item 10)	During the initial performance test	
Meet the operating limits (App. A, Item 11)	Continuous compliance required, upon setting	

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	operating limits, when sewage sludge is in the combustion chamber	
Meet the emission limits and standards and demonstrate initial and ongoing compliance with the emission limits and standards (App. A, Item 12.a.)	By April 30, 2022	
If Defendant fails to demonstrate compliance with emission limits for any pollutant, Defendant shall propose measures, in writing, for attaining and demonstrating compliance with the applicable emission limit(s) (App. A, Item 12.b.).	Shall propose no later than 60 Days from knowledge of failure	
Install a carbon monoxide emissions monitoring system and demonstrate compliance with the NSPS Subpart LLLL carbon monoxide emission limit using a continuous emissions monitoring system (App. A, Item 12.c.)	By July 31, 2021	
Submit initial compliance report (App. A, Item 13)	Within 60 days of completing the initial performance test	
Conduct annual performance test (App. A, Item 15)	Annually (between 11 and 13 calendar months following the previous performance test)	
Submit annual compliance report (App. B., Item 16)	Annually (12 months from submission of previous compliance report)	

On motion made by Commissioner Torres and duly seconded, the report was received and resolution adopted by unanimous vote of those present.

OPPORTUNITY FOR GENERAL PUBLIC COMMENTS

No one from the public appeared to be heard.

ADJOURNMENT

The meeting was adjourned at 2:32 PM

ATTEST:

John S. Mirtle
District Clerk

Date of Approval