

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA
and STATE OF NEW JERSEY

Plaintiffs

v.

STONY BROOK REGIONAL SEWERAGE
AUTHORITY,

Defendant.

Civil No. 3:22-cv-05922

CONSENT DECREE

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WHEREAS, Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of New Jersey, on behalf of the New Jersey Department of Environmental Protection (“DEP”), have filed a complaint in this action concurrently with this Consent Decree, for injunctive relief and civil penalties under Section 113(b)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b)(2), alleging that the Defendant, Stony Brook Regional Sewerage Authority (hereinafter “the Defendant” or “SBRSA”), violated regulations set forth in 40 C.F.R. Part 62, Subpart LLL (“Subpart LLL”), which were promulgated by EPA under Title I of the CAA, 42 U.S.C. §§ 7411 and 7429, and Section 129(f)(3) of the CAA, 42 U.S.C. § 7429(f)(3); and DEP has included claims in the complaint for violations of N.J.A.C. 7:27-22.1 *et seq*, which was promulgated by DEP under New Jersey’s Air Pollution Control Act, N.J.S.A. 26:2C-1 *et seq*;

WHEREAS, the Defendant’s two multiple hearth sewage sludge incineration (“SSI”) units, located at Defendant’s wastewater treatment facility, 290 River Road, Princeton, NJ 08540 (“Facility”), are designed to dispose of domestic sewage sludge;

WHEREAS, the Complaint contains allegations that the Defendant operated the SSI units without timely compliance with the requirements of the above-listed statutes and regulations;

WHEREAS, EPA issued a notice of violation (“NOV”) to the Defendant with respect to the Subpart LLL violations on August 27, 2018;

WHEREAS, EPA provided the Defendant and the State of New Jersey with actual notice of the alleged Subpart LLL violations, in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b);

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WHEREAS, on April 4, 2016, SBRSA submitted to EPA and DEP a final control plan and site-specific monitoring plan that EPA and DEP allege lack the information required by Subpart LLL;

WHEREAS, SBRSA asserts that the loss of commercial power, scrubber water or scrubber flooding, induced draft fan failure, or loss of instrument air will cause the bypass to open automatically;

WHEREAS, on October 29, 2018, after the NOV was issued, Defendant installed a 30KVA uninterruptable power supply (“UPS”) to reduce the occurrence of bypass events caused by intermittent commercial power voltage drops/sags;

WHEREAS, the Defendant does not admit any liability to the United States or the State of New Jersey arising out of the transactions or occurrences alleged in the Complaint;

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;

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 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, and with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

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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, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and has supplemental jurisdiction over the claims by New Jersey under 28 U.S.C. § 1367, and jurisdiction over the Parties. Venue lies in this District under Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 28 U.S.C. §§ 1391(b)-(c), and 28 U.S.C. § 1395(a), because the alleged violations took place in this District. For purposes of this Decree, or any action to enforce this Decree, SBRSA consents to the Court's jurisdiction over this Decree and any such action, and over SBRSA, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, SBRSA 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 SBRSA and the State of New Jersey, specifically DEP, by the United States.

II. APPLICABILITY

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

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

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agreement to EPA Region 2, the United States Department of Justice, and the State of New Jersey in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

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

7. In any action to enforce this Consent Decree, SBRSA 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 under 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:

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 and New Jersey in this action.

c. “Composite Sample” shall be the composite sample of sewage sludge required under Paragraph 12.a.

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d. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIII (Appendices)).

e. “Date of Lodging” shall mean the date on which the Consent Decree is lodged with the District Court.

f. “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.

g. “Defendant” shall mean defendant Stony Brook Regional Sewerage Authority.

h. “DEP” shall mean the New Jersey Department of Environmental Protection and any of its successor departments or agencies.

i. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

j. “Effective Date” shall have the definition provided in Section XV (Effective Date).

k. “Facility” shall mean the wastewater treatment plant located at 290 River Road, Princeton, New Jersey 08540.

l. “Incinerator 1” shall mean one of SBRSA’s two SSI units, which was originally installed in 1978, and which is a 22’ 3” outside diameter, seven hearth Bethlehem Corp. multiple hearth unit. The equipment inventory in SBRSA’s Title V Operating Permit identifies Incinerator 1 as Inc. 1, E1.

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- m. “Incinerator 2” shall mean SBRSA’s second SSI unit, which is identical to Incinerator 1, and was also originally installed in 1978. The equipment inventory in SBRSA’s Title V Operating Permit identifies Incinerator 2 as Inc. 2, E2.
- n. “New Jersey” shall mean the State of New Jersey, on behalf of DEP.
- o. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.
- p. “Parties” shall mean the United States, the State of New Jersey, and Defendant.
- q. “Section” shall mean a portion of this Decree identified by a Roman numeral.
- r. “Subpart LLL” shall mean the federal Clean Air Act regulations at 40 C.F.R. Part 62, Subpart LLL.
- s. “Title V Operating Permit” shall mean the currently effective DEP-approved operating permit issued to SBRSA by the DEP under Title V of the CAA.
- t. “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

- 9. Within thirty (30) Days after the Effective Date, Defendant shall pay a civil penalty of \$335,750, together with interest accruing from the Date of Lodging of the Consent Decree, at the rate specified in 28 U.S.C. § 1961, which shall be divided between the Plaintiffs as follows:
 - a. \$167,875, plus applicable interest, to the United States; and
 - b. \$167,875, plus applicable interest, to the State of New Jersey.

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10. SBRSA shall pay the civil penalty in the following manner:

a. SBRSA shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to SBRSA by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of New Jersey after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which SBRSA shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Antonia F. Shurott-Pchola, P.E., Executive Director
Stony Brook Regional Sewerage Authority
(609) 924-8881 ext. 0207
apchola@sbrsa.org

on behalf of SBRSA. SBRSA may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices).

At the time of payment, SBRSA 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 Finance 20 Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIV (Notices); and (iii) to EPA Region 2 in accordance with Section XIV (Notices). Such notice shall state that the payment is for the civil penalty owed under the Consent Decree in the matter of *U.S. v. Stony Brook Regional Sewerage Authority* and shall reference the civil action number, CDCS Number, and Department of Justice (“DOJ”) case number 90-5-2-1-12080.

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b. SBRSA shall pay the civil penalty due to the State of New Jersey by cashier's or certified check payable to "Treasurer, State of New Jersey" and shall submit the payment with the appropriate invoice (to be provided by DEP) to the following address:

Division of Revenue
New Jersey Department of Treasury
P.O. Box 417
Trenton, New Jersey 08625-0417

V. COMPLIANCE REQUIREMENTS

11. By the Date of Lodging, SBRSA shall comply with all applicable requirements of Subpart LLL, except for those requirements for which an alternative compliance deadline is established in this Section V.

A. Submission of Final Control Plan, and Site-Specific Monitoring Plan

12. Final Control Plan and Site-Specific Monitoring Plan.

a. Within 45 Days of the Date of Lodging, SBRSA shall submit to EPA and DEP a revised final control plan, as defined in 40 C.F.R. § 62.15900, that includes:

- i. A proposal for continuous compliance with the Subpart LLL emission limit for mercury ("Mercury Control Plan"). At a minimum, the Mercury Control Plan must include all of the information required by 40 C.F.R. § 62.15965(b)(2), proposed limits for any proposed operating parameters, and a sewage sludge sampling and laboratory analysis plan.
- ii. In discussing how SBRSA will establish limits for the proposed operating parameters, as required by 40 C.F.R.

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§ 62.15965(b)(2)(iii), the Mercury Control Plan must include any calculations, data, and information, including any performance test results, supporting the proposed limits. If SBRSA proposes to monitor the mercury concentration of the sludge charged into the incinerators as an operating parameter to limit mercury emissions: (A) the proposed limit for the sludge mercury concentration may not exceed 5 parts per million by weight for each semi-monthly sludge sample; and (B) SBRSA must describe the steps it will take to address an exceedance of the proposed limit (*e.g.*, root cause analysis and corrective action);

- iii. The plan for sampling and laboratory analysis of the sewage sludge charged into the incinerators must: require that the mercury sludge composite for laboratory analysis (“Composite Sample”) be prepared at least semi-monthly, consisting of individual samples collected each day that sludge is charged into an incinerator, over a period of no longer than 16 Days; include a protocol for homogenization of the composite sample and a schedule of all individual steps from sludge sample collection through the receipt of the laboratory report; and, incorporate the sampling, composite, and analysis methods set forth in Appendix A.
- iv. A proposal for continuous compliance with the Subpart LLL emission limit for dioxins and furans, pursuant to Table 3 of Subpart

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LLL, supported by the information described in 40 C.F.R. § 62.15965(b)(2); and

- v. The standard operating procedures, and equipment inspection and maintenance procedures and schedules developed under Paragraph 24 (“Standard Operating Procedure for Incinerator Operations During Impending Inclement Weather”), attached at Appendix B.

b. Within 45 Days of the Date of Lodging, SBRSA shall submit to EPA and DEP a revised site-specific monitoring plan, as provided in 40 C.F.R. § 62.15995, that shall include:

- i. Any alternative monitoring proposals, including (A) proposals for alternative monitoring requirements for the operating parameters for mercury and dioxins and furans that SBRSA proposed in the revised final control plan submitted under Paragraph 12.a, (B) any proposal for an alternative afterburner temperature monitoring plan, (C) any proposal for an alternative monitoring method for the measurement of scrubber effluent pH, (D) any proposal for an alternative monitoring method for the measurement of wet electrostatic precipitator water flow, and (E) any proposal for an alternate test method for measurement of particulate matter emissions; and
- ii. For each alternative monitoring proposal, the information required by 40 C.F.R. § 62.15995(e)(3).

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c. EPA shall in accordance with Section VII (Review and Approval Procedures) review for approval the SBRSA proposals for controlling and monitoring emissions of mercury (the Mercury Control Plan) and dioxins and furans set forth in the revised final control plan submitted under Paragraph 12.a, and any alternative monitoring proposals submitted under this Paragraph 12.b.

d. Following EPA approval under Paragraph 1212.c, DEP shall, in consultation with EPA and in accordance with Section VII (Review and Approval Procedures), review and approve or disapprove the revised final control plan and site-specific monitoring plans.

13. If following SBRSA's submission of the revised final control plan required by Paragraph 12.a, SBRSA exceeds the limits proposed in the Mercury Control Plan, or following EPA's approval of the Mercury Control Plan, SBRSA exceeds limits in the approved Mercury Control Plan, SBRSA shall:

- a. Be subject to stipulated penalties under Paragraph 46;
- b. Conduct a root cause analysis of the exceedance and identify and undertake corrective measures necessary to prevent future exceedances; and,
- c. Report the deviation, root cause analysis, and corrective actions taken in the quarterly report required under Paragraph 28. If no corrective actions are taken, explain why not.

B. Compliance Demonstration

14. Within 45 Days of the Date of Lodging, SBRSA shall submit a performance test plan for Incinerators 1 and 2. The test plan shall be subject to EPA and DEP review and, following consultation with EPA, DEP approval. The test plan shall provide for a performance test to take

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place in the first calendar quarter of 2023 and meet the requirements of 40 C.F.R. §§ 62.16000 and 62.16015, and SBRSA's Title V Operating Permit, and include the sludge sampling, composite, and analysis protocols set forth in Appendix A that apply to performance tests.

15. Within 30 days of test plan approval or no later than 60 days prior to the testing deadline, whichever is later, SBRSA must contact DEP Emission Measurement System ("EMS") at 609-984-3443 to schedule a mutually acceptable test date.

16. SBRSA shall conduct performance tests for Incinerators 1 and 2 in accordance with the test plan approved under Paragraph 14 and the schedule established pursuant to Paragraph 15.

17. Performance Test Reports. Within 60 Days of completing a performance test required under Paragraph 16 for each SSI unit, SBRSA shall submit to EPA and DEP the following:

- a. The complete test report for the performance test results;
- b. The values of the site-specific operating limits confirmed and/or re-established during the performance test, including calculations and methods;
- c. A discussion of how the performance test results document that the Mercury Control Plan and site-specific monitoring requirements approved by EPA under Paragraph 12.c will provide equivalent or better assurance of compliance with the Subpart LLL emission limit for mercury; and
- d. In the event that the performance test results indicate that a greater quantity of mercury was emitted from the incinerator stack than was present in the sludge feed, SBRSA shall submit an analysis of the possible causes of that result.

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18. Non-compliance with Emission Limits. If the performance test fails to demonstrate compliance with the Subpart LLL mercury emission limit, SBRSA shall:

a. Be subject to stipulated penalties under Section VIII (Stipulated Penalties) for failure to meet Subpart LLL emission limits.

b. In lieu of the discussion required by Paragraph 17.c, propose measures and a schedule for attaining and demonstrating compliance with the applicable Subpart LLL mercury emission limit as expeditiously as practicable. EPA shall, in consultation with DEP, review for approval the proposed compliance measures and schedule in accordance with Section VII (Review and Approval Procedures). Once approved, SBRSA shall comply with the proposed measures and schedule as provided in Section VII (Review and Approval Procedures), and SBRSA will be subject to stipulated penalties for failure to complete the measures in accordance with the approved schedule.

19. Application for Permit Modification.

a. Concurrently with the submission of the performance test report required under Paragraph 17, SBRSA shall submit to DEP an application to modify the Title V Operating Permit to incorporate the operating parameter limits for mercury and dioxins and furans confirmed or re-established during that performance test. When submitting the permit modification application required by this Paragraph, SBRSA shall concurrently submit to DEP the revised final control plan and revised site-specific monitoring plan approved under Paragraph 12, and the SOPs for bypass events required under Paragraph 24.

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b. Concurrently with the submission of the performance test report required under Paragraph 17, or the test report for any subsequent Subpart LLL performance test conducted while the Consent Decree is in effect, SBRSA shall submit an application to modify its Title V Operating Permit that seeks to:

- i. Incorporate any operating parameter limits re-established during the performance test; and
- ii. Modify the permitted maximum feed rate to 117.6% of the lowest sludge feed rate recorded during any single test run in the event that the performance test did not satisfy the 40 C.F.R. § 62.16015 requirement that the sewage sludge incinerator be operated at a minimum of 85 percent of the permitted capacity during each test run.

20. Compliance with Operating Parameter Limits. Except as set forth below, SBRSA shall comply with the operating parameter limits that were confirmed, established, or re-established in the most recent Subpart LLL performance test. SBRSA shall comply with operating limits confirmed or re-established during the most recent a Subpart LLL performance test from the Day that SBRSA submits the report for the performance test.

a. Compliance with the operating parameter limits proposed in the Mercury Control Plan.

- i. SBRSA shall comply with the limit(s) for the operating parameter(s) identified in the Mercury Control Plan proposed in Paragraph 12.a from the Day that SBRSA submits the revised final

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control plan required under Paragraph 12 until new operating parameter limits are confirmed or re-established as set forth in Paragraph 20.a.ii.

- ii. Operating parameters identified in the Mercury Control Plan may be re-established pursuant to EPA and DEP review and approval, as set forth in Paragraph 12.c and d, or confirmed or re-established pursuant to a Subpart LLL performance test meeting the requirements of 40 C.F.R. § 62.16000. SBRSA shall comply with the most recent of the operating parameter limits confirmed or re-established as set forth in this paragraph.

b. Compliance with operating parameter limits for all pollutants other than mercury and dioxins and furans. SBRSA shall comply with the operating parameter limits established pursuant to Stony Brook's 2020 performance tests until SBRSA confirms or re-establishes those operating parameter limits during the performance test required pursuant to Paragraph 16, or a subsequent Subpart LLL performance test meeting the requirements of 40 C.F.R. § 62.16000.

21. As provided in 40 C.F.R. § 62.15995(e)(6), EPA may decide at any time that additional or alternative operating limits or alternative approaches to establishing operating limits are necessary to demonstrate compliance with the emission limits of Subpart LLL. If EPA notifies SBRSA in writing of such decision, SBRSA shall submit within 45 Days of the written notice a revised final control plan, site specific monitoring plan, and/or Mercury Control Plan addressing the deficiencies identified in EPA's written notice. EPA will review the revised plan(s) for

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approval in accordance with Section VII (Review and Approval Procedures). SBRSA shall comply with all previously approved operating parameter limits and monitoring methods until EPA takes action pursuant to Paragraph 36 on the revised plan(s) submitted under this Paragraph. Once EPA takes action on the revised plan(s) pursuant to Paragraph 36, SBRSA shall comply with any approved parts of the revised plan(s) as provided in Paragraph 37. Within 45 Days of EPA's approval of the revised plan(s) and the resolution of any disputes under Paragraph 39, SBRSA shall submit to DEP an application to modify the Title V Operating Permit to incorporate any plan(s) approved under this Paragraph. SBRSA shall comply with any plan(s) submitted and approved pursuant to this Paragraph in accordance with Section VII. Any plan(s) submitted and approved under this Paragraph shall supersede any prior versions of the plan(s) submitted under this Consent Decree. For example, but not by way of limitation, a revised Mercury Control Plan submitted and approved pursuant to this Paragraph will supersede the Mercury Control Plan submitted and approved under Paragraph 12.

C. Bypass Events

22. From the Date of Lodging, each use of the bypass stack at any time that sewage sludge is in the combustion chamber shall be subject to stipulated penalties as an emission limit violation as set forth in Paragraph 48.

23. The date, time, and duration of a Bypass Event shall be recorded by means of an automated system. SBRSA may separately utilize manual logging, provided Bypass Events are also recorded by means of an automated system.

- a. For purposes of this Paragraph, a "Bypass Event" occurs when sludge is in the combustion chamber during an operating Day while:
 - i. the damper in the bypass stack is in the open position, or

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ii. flow through the bypass stack is detected by means of an automated monitoring device.

b. Duration. The Bypass Event shall be recorded for the entire time that the bypass stack is in the open position and sludge remains in the combustion chamber.

c. Method. The Bypass Event shall continue to be recorded with an automated data acquisition system that is powered independently and for which an uninterruptible power supply (“UPS”) has been installed to ensure the data acquisition system is not affected by loss of power from the Facility’s electrical service provider.

24. No later than 45 Days after the Date of Lodging, SBRSA shall submit for EPA and DEP review the following standard operating procedures and equipment inspection and maintenance procedures and schedules (collectively, “SOPs”):

a. **Minimize bypass stack emissions due to inclement weather or a reduction in or restriction on the availability of electrical power in SBSRA electrical service area.** SBRSA has developed standard operations to shut down its incinerators during periods of anticipated high rainfall that would cause excessive hydraulic loading to the Facility, or a lightning strike that might possibly cause a Bypass Event to occur (“Standard Operating Procedure for Incinerator Operations During Impending Inclement Weather,” attached as Appendix B”). In addition to weather conditions related to precipitation that may cause Bypass Events, the SOP includes other conditions related to weather that may cause Bypass Events, such as warm weather conditions that may produce electrical brownouts or blackouts. In the event that SBRSA receives warnings of impending brownouts or blackouts from its electrical service provider, SBRSA shall take all necessary

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measures to modify its operations in order to minimize the possibility of the occurrence of Bypass Events.

b. **Minimize bypass stack emissions caused by equipment malfunction.**

SBRSA has identified critical equipment components (e.g., the incinerator's center shaft drive pinion) that were responsible for past Bypass Events. SBRSA shall identify equipment at the Facility whose failure would be capable of creating a Bypass Event and shall prepare inspection and maintenance/replacement procedures and schedules to prevent the occurrence of Bypass Events caused by failures of the identified equipment.

25. SBRSA shall include in the quarterly reports required under Paragraph 28 a report of all Bypass Events. Each report shall:

a. Identify the date, time, and duration of all times when the bypass stack was open and sludge remained in the combustion chamber, the cause of the Bypass Event, and any action that SBRSA took, and will take, to prevent recurrence of the Bypass Event.

b. Discuss the effectiveness of the UPS installed on October 29, 2018 and identify Bypass Events caused by short duration electrical variations that the UPS was unable to prevent.

c. If an interruption in power to the Facility caused the Bypass Event, describe the nature, duration, magnitude, and cause of the power interruption with specificity, to the extent known. SBRSA shall use its best efforts to provide this information, including, but not limited to, consulting with SBRSA's electrical supply utility.

D. Additional Compliance Obligations

26. **Permits.** Where any compliance obligation in this Section V requires SBRSA to obtain a federal, state, or local permit or approval, SBRSA shall submit timely and complete

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applications and take all other actions necessary to obtain all such permits or approvals. SBRSA may seek relief under the provisions of Section IX (Force Majeure) 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, but only if SBRSA has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

E. State Environmentally Beneficial Project

27. With respect to the violations alleged in the Complaint solely by New Jersey, New Jersey and SBRSA agree that SBRSA will pay \$44,250 to DEP, which payment shall be dedicated to DEP's Environmental Mitigation Project fund to finance projects that will mitigate the alleged environmental harm caused by the alleged violations. This payment will be due within ninety (90) days of the Effective Date and shall be paid in accordance with the invoice and invoice instructions that New Jersey will provide within 75 Business Days of the Effective Date.

VI. REPORTING REQUIREMENTS

28. Beginning with the first complete calendar quarter after the Date of Lodging of this Consent Decree, and then every subsequent calendar quarter until the termination of the Consent Decree, SBRSA shall submit to the U.S. Department of Justice, EPA, and DEP a report that includes: a list of all Consent Decree compliance measures that have been completed; a status update and completion timeline for compliance measures that have not been completed; problems encountered or anticipated (together with implemented or proposed solutions); the lab analysis results for any mercury sludge composite collected and analyzed during that quarter in accordance with the Mercury Control Plan, and reports of any deviations from Mercury Control Plan limits

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approved by EPA and DEP under Paragraph 12, and root cause analyses as required by Paragraph 13; a report of all deviations from the Incinerator 1 and Incinerator 2 operating parameter limits in effect at the time of the deviation; a report of all times that the bypass stack was open as required by Paragraph 25; the status of any permit applications; and the results of any inspections or tests, and any repairs made to Incinerator 1 or Incinerator 2, their associated control devices and emission points, and any ancillary equipment used to convey incinerator exhaust gases to a permitted emission point (*i.e.*, the induced draft fan). SBRSA shall submit each report within 45 Days of the last Day of each calendar quarter. SBRSA's first quarterly report shall include the required information from the Date of Lodging of the Consent Decree through the end of the first complete calendar quarter after that date.

29. If SBRSA violates, or has reason to believe that it may violate, any requirement of this Consent Decree, SBRSA shall notify, via email, EPA and DEP of such violation and its likely duration, within 72 hours of when SBRSA first becomes aware of the actual or potential 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 notification email is due, SBRSA shall so state in the email. SBRSA shall investigate the cause of the violation and shall then submit a follow up report, including a full explanation of the cause of the violation, within 30 Days of the Day SBRSA becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph 30 relieves SBRSA of its obligation to provide the notice required by Section IX (Force Majeure).

30. Whenever any violation of this Consent Decree, or of the statutes, regulations and permits referenced herein, or any other event affecting SBRSA's performance under this Decree,

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or the performance of Incinerator 1 or Incinerator 2, including their associated air pollution control devices, may pose an immediate threat to the public health or welfare or the environment, SBRSA shall notify EPA and DEP orally or by electronic transmission as soon as possible, but no later than 24 hours after SBRSA first knew of the violation or event. This notification requirement is in addition to any other notifications requirement(s) under federal or New Jersey law, including but not limited to N.J.S.A. 26:2C-19(e) and N.J.A.C. 7:1E-5.3, and in addition to the requirements set forth in the preceding Paragraph.

31. All reports and notifications made under this Section shall be submitted to the persons designated in Section XIV (Notices).

32. Any report submitted by SBRSA under this Section shall be signed by an official of the submitting party 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 fines and imprisonment for knowing violations.

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

34. The reporting requirements of this Consent Decree do not relieve SBRSA of any reporting obligations required by the CAA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. Notwithstanding the United States' and DEP's review and approval of any documents submitted to them by SBRSA under this Decree,

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SBRSA shall remain solely responsible for compliance with the terms of the CAA and its implementing regulations, and this Decree.

35. Any information as required by this Consent Decree may be used by the United States or New Jersey in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. REVIEW AND APPROVAL PROCEDURES

36. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted to EPA and/or DEP for approval under this Consent Decree, the designated approving agency (either EPA or DEP) shall in writing:

- a. approve the submission;
- b. approve the submission upon specified conditions;
- c. approve part of the submission and disapprove the remainder; or
- d. disapprove the submission.

37. If the submission is approved under Paragraph 36.a, SBRSA shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part under Paragraph 36.b or 36.c, SBRSA shall, upon written direction from EPA or DEP, take all actions required by the approved plan, report, or other item that EPA or DEP determines are technically severable from any disapproved portions, subject to SBRSA's right to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).

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38. If the submission is disapproved in whole or in part under Paragraph 36.c or 36.d, SBRSA shall, within 45 Days or such other time as EPA or DEP may allow if provided 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, SBRSA shall proceed in accordance with the preceding Paragraph.

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

40. Any stipulated penalties applicable to the original submission, as provided in Section VIII (Stipulated Penalties), shall accrue during the 45-day period provided in Paragraph 38 (or other specified period), 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 material breach of the SBRSA's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

VIII. STIPULATED PENALTIES

41. SBRSA shall be liable for stipulated penalties to the United States and/or New Jersey, as specified below, for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any payment of civil penalties, any compliance requirements of this Decree, any work plan or schedule approved under this Decree, and the submission of any

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required reports or notifications in accordance with all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

42. Transfer of Facility. If the SBRSA fails to: (a) provide a copy of this Consent Decree to any proposed transferee; (b) provide written notice to the United States or the State of New Jersey at least 30 Days prior to any transfer of any portion of the Facility; or (c) provide a copy of the proposed written agreement with the transferee as required by Paragraph 5, SBRSA shall pay a stipulated penalty of \$10,000 per occurrence.

43. Late Payment of Civil Penalty. If SBRSA fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, SBRSA shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is not paid after the due date, plus interest accruing from the due date at the rate specified in 28 U.S.C. § 1961 as of the due date. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

44. Compliance Requirements. Except as provided in Paragraphs 45 through 51, the following stipulated penalties shall accrue per violation per Day for each violation of any of the requirements specified in Section V (Compliance Requirements), including the sampling and analytical procedures in Paragraph 12.a. and Appendix A:

<i>Period of Noncompliance</i>	<i>Penalty per Violation per Day</i>
1st through 14th Day	\$250.00
15th through 30th Day	\$500.00
31st Day and beyond	\$1,000.00

45. Exceedance of Sludge Sample Holding Time. The following stipulated penalty shall accrue per incident that the 28-day holding time for mercury analysis, as set forth in Paragraph 4 of Appendix A, is not met:

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Per sludge sample for which the 28-day holding time is exceeded \$2,000

46. Mercury Composite Sample Limit. As provided in Paragraph 13, the following stipulated penalty shall accrue per exceedance of the proposed or approved Mercury Control Plan limits:

Per composite sample in exceedance of the limit \$3,000

47. Operating Parameter Limits. The following stipulated penalties shall accrue per violation per Day for each violation of the Paragraph 20 requirement to comply with operating parameter limits:

<u>Period of Continuous Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 5 th Day	\$250.00
6 th through 10 th Day	\$500.00
11 th Day and beyond	\$1,000.00

48. Bypass Events. The following stipulated penalties shall accrue per incident in which SBRSA violates emission limits by use of the bypass stack in violation of Paragraph 22.

Per bypass incident \$3,000

49. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI (Reporting Requirements):

<u>Period of Continuous Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 14th Day	\$250.00
15th through 30th Day	\$500.00
31st Day and beyond	\$1,000.00

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50. Review and Approval Procedures. The following stipulated penalties shall accrue per violation per Day for each violation of any of the requirements of Section VII (Review and Approval Procedures):

<u>Period of Continuous Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 14th Day	\$1,000.00
15th through 30th Day	\$2,500.00
31st Day and beyond	\$5,000.00

51. State Environmentally Beneficial Project. The following stipulated penalties, payable only to New Jersey, shall accrue for each Day that SBRSA fails to make the payment due to DEP's Environmental Mitigation Project fund.

<u>Period of Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 14th Day	\$500.00
15th through 30th Day	\$1000.00
31st Day and beyond	\$2500.00

52. 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 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 or New Jersey has notified Defendant that a violation of this Consent Decree has occurred.

53. SBRSA shall pay any stipulated penalty to the United States and New Jersey within forty-five (45) Days of receiving a written demand by either Plaintiff. Except as otherwise provided in this Paragraph, stipulated penalties shall be payable as follows: fifty (50) percent, plus

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any applicable interest, to the United States and fifty (50) percent, plus any applicable interest, to New Jersey. Any stipulated penalties for failure to make the payment due for the Environmentally Beneficial Project set forth in Section V.E. shall be payable to New Jersey only. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

54. Stipulated penalties shall continue to accrue as provided in Paragraph 5241 during any dispute resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the Plaintiff(s) that is not appealed to the District Court, SBRSA shall pay accrued penalties determined to be owing, together with interest accruing from the date SBRSA received the written demand under Paragraph 53 at the rate specified in 28 U.S.C. § 1961 as of that date, to the United States and New Jersey within 30 Days of the effective date of the agreement or the receipt of the Plaintiff's(s') decision.

b. If the dispute is appealed to the District Court and the Plaintiff(s) prevail in whole or in part, SBRSA shall pay all accrued penalties determined by the Court to be owing, together with interest accruing from the date SBRSA received the written demand under Paragraph 53 at the rate specified in 28 U.S.C. § 1961 as of that date, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, SBRSA shall pay all accrued penalties determined to be owing, together with interest accruing from the date SBRSA received the written demand under Paragraph 53 at the rate specified in 28 U.S.C. § 1961 as of that date, within 15 Days of receiving the final appellate court decision.

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55. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalties provisions of this Decree shall be retroactively enforceable with regard to any and all violations of Sections V and VI that have occurred between the Date of Lodging and the Effective Date of this Decree, except that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

56. SBRSA shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10.a, 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. SBRSA shall pay stipulated penalties to New Jersey in the manner set forth in Paragraph 10.b.

57. Notwithstanding any other provision of this Section, the United States or New Jersey may, in its unreviewable discretion, waive any portion of stipulated penalties owed to it that have accrued under this Consent Decree.

58. If SBRSA fails to pay stipulated penalties according to the terms of this Consent Decree, SBRSA 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, together with additional penalties and administrative costs to the extent allowed by applicable law. Nothing in this Paragraph shall be construed to limit the United States or New Jersey from seeking any remedy otherwise provided by law for SBRSA's failure to pay any stipulated penalties.

59. The payment of penalties and interest, if any, shall not alter in any way SBRSA's obligations to complete the performance of the requirements of this Consent Decree.

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60. Non-Exclusivity of Remedy. The stipulated penalty provisions of this Section shall be in addition to all other rights reserved by the United States and New Jersey under Section XII (Effect of Settlement/Reservation of Rights) below. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or New Jersey to seek any other relief they deem appropriate for Defendant's violations of this Decree or statutes, regulations, or permits referenced within it, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid under this Consent Decree. Nothing in this Paragraph shall be construed as prohibiting, altering or in any way limiting any defenses available to Defendant with respect to any such violations, except as limited by Section X (Dispute Resolution).

IX. FORCE MAJEURE

61. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of SBRSA, of any entity controlled by SBRSA, or of SBRSA's contractors, which delays or prevents the performance of any obligation under this Consent Decree despite SBRSA's best efforts to fulfill the obligation. The requirement that SBRSA 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) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force majeure" does not include SBRSA's financial inability to perform any obligation under this Consent Decree.

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62. 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, SBRSA shall provide notice orally or by electronic mail to Robert Buettner, EPA Region 2's Chief of the Air Compliance Branch, Enforcement and Compliance Assurance Division, and to Richelle Wormley, Director, Division of Air Enforcement, DEP within 72 hours of when SBRSA first knows that the event might cause a delay. Within seven Days thereafter, SBRSA shall provide in writing to EPA and DEP 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; SBRSA'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 SBRSA, such event may cause or contribute to an endangerment to public health, welfare, or the environment. SBRSA 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 requirements shall preclude SBRSA 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. SBRSA shall be deemed to know of any circumstance of which SBRSA, any entity controlled by SBRSA, or SBRSA's contractors knew or should have known.

63. If the Plaintiffs agree 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 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

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shall not, of itself, extend the time for performance of any other obligation. The Plaintiffs will notify SBRSA in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

64. If either or both Plaintiffs disagree that the delay or anticipated delay has been or will be caused by a force majeure event, the Plaintiffs will notify SBRSA in writing of its decision.

65. If SBRSA elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 Days after receipt of Plaintiffs' notice. In any such proceeding, SBRSA 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 SBRSA complied with the requirements of Paragraphs 61 and 62. If SBRSA carries this burden, the delay at issue shall be deemed not to be a violation by SBRSA of the affected obligation of this Consent Decree identified to the Plaintiffs and the Court.

X. DISPUTE RESOLUTION

66. 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. SBRSA's failure to seek resolution of a dispute under this Section shall preclude SBRSA from raising any such issue as a defense to an action by the United States to enforce any obligation of SBRSA arising under this Decree.

67. 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

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to have arisen when SBRSA sends the United States and New Jersey a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with New Jersey, shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, SBRSA invokes formal dispute resolution procedures as set forth below.

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

69. After consultation, the United States and/or New Jersey shall serve its/their Statement of Position within 45 Days of receipt of SBRSA's Statement of Position. Such 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 and/or New Jersey. Such Statement of Position shall be binding on SBRSA, unless SBRSA files a motion for judicial review of the dispute in accordance with the following Paragraph.

70. SBRSA may seek judicial review of the dispute by filing with the Court and serving on the United States and New Jersey, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 Days of receipt of the United States' and/or New Jersey's Statement of Position under the preceding Paragraph.

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The motion shall contain a written statement of SBRSA'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. SBRSA's motion shall not raise new issues or submit new facts that were not previously presented to the United States and/or New Jersey during formal dispute resolution.

71. After consultation, the United States and/or New Jersey shall respond to SBRSA's motion within the time period allowed by the Local Rules of the Court. SBRSA may file a reply memorandum, to the extent permitted by the Local Rules.

72. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 68 of this Section pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval under this Consent Decree; the adequacy of the performance of work undertaken under this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, SBRSA shall have the burden of demonstrating, based on the administrative record, that the position of the United States and/or New Jersey 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 this Section, SBRSA shall bear the burden of demonstrating that its position complies with this Consent Decree and its position will

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achieve compliance with the terms and conditions of this Consent Decree, its permits, and the Act in an expeditious manner.

73. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of SBRSA under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in this Section. If SBRSA does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

74. The Plaintiffs and their 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 and/or New Jersey in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs and similar data; and
- d. assess SBRSA's compliance with this Consent Decree.

75. Until five years after the termination of this Consent Decree, SBRSA 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 form) in its or its contractors' or agents' possession or control, or that come into its or its

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

76. At the conclusion of the information-retention period provided in the preceding Paragraph, SBRSA shall notify the Plaintiffs at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States and/or New Jersey, SBRSA shall deliver any such documents, records, or other information to EPA.

77. SBRSA may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If SBRSA asserts such a privilege, 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 asserted by SBRSA. However, no documents, records, or other information created or generated as required by this Consent Decree shall be withheld on grounds of privilege.

78. SBRSA 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 SBRSA seeks to protect as CBI, SBRSA shall follow the procedures set forth in

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40 C.F.R. Part 2. SBRSA may make no claim of business confidentiality, privilege, or protection regarding any records that SBRSA is required to create or generate under this Consent Decree. Under no circumstances shall emissions data be identified or considered CBI.

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

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

80. This Consent Decree resolves the civil claims of the United States and New Jersey alleged in the Complaint filed in this action through the Date of Lodging. This Consent Decree does not limit any rights or remedies available to the United States and/or New Jersey for any criminal violations, nor does it limit any defenses available to Defendant thereon.

81. Except as expressly provided in this Consent Decree, the United States and New Jersey reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or New Jersey to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal laws, State laws, regulations, or permit conditions. The United States and New Jersey further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

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82. In any subsequent administrative or judicial proceeding initiated by the United States or New Jersey for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, SBRSA shall not assert, and may not maintain, any defense or claim based upon 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 or New Jersey in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved under Paragraph 80.

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

84. This Consent Decree does not limit or affect the rights of SBRSA or of the United States or New Jersey against any third parties not a party to this Consent Decree, nor does it limit the rights of third parties not a party to this Consent Decree against SBRSA, except as otherwise provided by law. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

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XIII. COSTS

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

XIV. NOTICES

86. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and transmitted as follows. For the United States, Notices must be sent by mail or e-mail, with a preference for e-mail, to the recipients listed below. For the State of New Jersey and DEP, Notices must be sent by mail and e-mail. For the EPA, SBRSA must register with the EPA's electronic reporting system (currently known as the "Central Data Exchange" or "CDX" system) and transmit all Notices to the EPA by uploading them to the electronic reporting system. SBRSA must also send a copy of all Notices via email to the EPA recipients listed below. Any Notices that cannot be uploaded to the CDX system or transmitted electronically via email must be mailed to the addresses below:

As to the United States by e-mail:

eescdcopy.enrd@usdoj.gov

RE: DJ # 90-5-2-1-12080

As to the United States by mail:

Chief
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
RE: DJ # 90-5-2-1-12080

As to EPA by phone or e-mail:

212-637-5031
Robert Buettner, Chief
Air Compliance Branch

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buettner.robert@epa.gov

Ray Slizys, Environmental Engineer
ECAD – Air Compliance Branch
Slizys.Ray@EPA.gov
212-637-4073

As to EPA by mail:

Robert Buettner, Chief
Air Compliance Branch
Enforcement and Compliance Assurance
Division
EPA Region 2
290 Broadway
New York, NY 10007

As to the State of New Jersey by e-mail:

Gary Wolf, II
Section Chief
Environmental Enforcement and
Environmental Justice Section
Gary.Wolf@law.njoag.gov

As to the State of New Jersey by mail:

Section Chief
Environmental Enforcement and
Environmental Justice Section
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-093

As to DEP by e-mail:

Richelle Wormley, Director
Division of Air Enforcement
Compliance & Enforcement
Richelle.Wormley@dep.nj.gov

Chris Odgers, Manager
Bureau of Air Compliance & Enforcement
Central Region
christopher.odgers@dep.nj.gov

As to DEP by mail:

Richelle Wormley, Director,
Division of Air Enforcement
NJDEP

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401 East State Street
Mail Code 401-04B
PO Box 420
Trenton, NJ 08625-042

Chris Odgers, Manager
Bureau of Air Compliance & Enforcement
Central Region
Mail Code 22-03A
P.O. Box 420
Trenton, NJ 081625-0420

As to Defendant by mail and/or e-mail:

Executive Director
Stony Brook Regional Sewerage Authority
290 River Road
Princeton, NJ 08540
apchola@sbrsa.org
Executive.Director@sbrsa.org

Manager of Engineering
Stony Brook Regional Sewerage Authority
290 River Road
Princeton, NJ 08540
consent.decree.reporting@sbrsa.org

Diane Alexander, Esq.
Maraziti Falcon, LLP
240 Cedar Knolls Road, Suite 301
Cedar Knolls, NJ 07927
dalexander@mfhenvlaw.com

87. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

88. Notices submitted under this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

89. 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. SBRSA hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVI. RETENTION OF JURISDICTION

90. 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, under Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

91. The terms of this Consent Decree, including any attached appendices, 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.

92. Any disputes concerning modification of this Decree shall be resolved under Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 72, 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).

XVIII. TERMINATION

93. After SBRSA has completed the requirements of Section V (Compliance Requirements) of this Decree, has maintained satisfactory compliance with its Subpart LLL and this Consent Decree for two (2) years, has paid the civil penalty and any accrued stipulated penalties and interest as required by this Consent Decree, and has obtained a permit modification incorporating site-specific operating parameter limits, any Party may serve upon the other Parties a “Request for Termination,” stating that SBRSA has satisfied those requirements, together with all necessary supporting documentation.

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

95. If the United States, after consultation with New Jersey, does not agree that the Decree may be terminated, SBRSA may invoke dispute resolution under Section X (Dispute Resolution). However, SBRSA shall not seek dispute resolution of any dispute regarding termination until 30 Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

96. 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,

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improper, or inadequate. SBRSA 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 SBRSA in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

97. Each Party certifies that at least one of its undersigned representatives 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.

98. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. SBRSA agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal 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.

XXI. INTEGRATION

99. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among 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. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

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XXII. FINAL JUDGMENT

100. 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 Parties under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES

101. The following Appendix is attached to and part of this Consent Decree:

“Appendix A” contains the “Procedures for Collection, Sampling, and Analysis of Mercury in Sludge Feed.”

“Appendix B” contains the “Standard Operating Procedure for Incinerator Operations During Impending Inclement Weather.”

Dated and entered this ___ day of _____, 2022.

UNITED STATES DISTRICT JUDGE

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FOR PLAINTIFF UNITED STATES OF AMERICA:

ELLEN MAHAN
Deputy Chief, Environmental Enforcement Section
U.S. Department of Justice
Environment and Natural Resources Division

Brian G. Donohue

10/6/22

BRIAN DONOHUE
Senior Attorney
U.S. Department of Justice
Environmental Enforcement Section
Environment and Natural Resources Division

Date

PROVIDENCE SPINA

9-26-2022
Date

Special Department of Justice Counsel

FOR PLAINTIFF UNITED STATES OF AMERICA:

PHILLIP R. SELLINGER

United States Attorney

District of New Jersey

JOHN A. RUYMANN

Assistant United States Attorney

Chief, Civil Division

U.S. Attorney's Office

District of New Jersey

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

PAUL
SIMON

Digitally signed by PAUL
SIMON
Date: 2022.09.30
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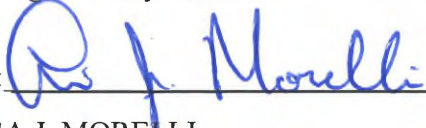
9/30/2022

PAUL SIMON
Acting Regional Counsel
U.S. Environmental Protection Agency, Region 2

Date

FOR PLAINTIFF STATE OF NEW JERSEY:

MATTHEW J. PLATKIN
Acting Attorney General of New Jersey

By: 

LISA J. MORELLI
Deputy Attorney General
New Jersey Department of Law &
Public Safety, Division of Law

9-22-22
Date

Commissioner
New Jersey Department of
Environmental Protection

By: _____

RICHELLE WORMLEY
Director
Division of Air Enforcement
New Jersey Department of
Environmental Protection

Date

FOR PLAINTIFF STATE OF NEW JERSEY:

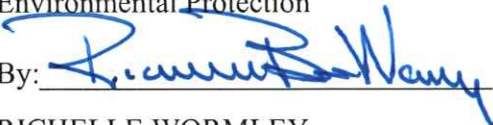
MATTHEW J. PLATKIN
Acting Attorney General of New Jersey

By: _____

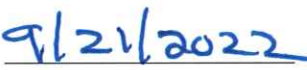
LISA J. MORELLI
Deputy Attorney General
New Jersey Department of Law &
Public Safety, Division of Law

Date

Commissioner
New Jersey Department of
Environmental Protection

By:  _____

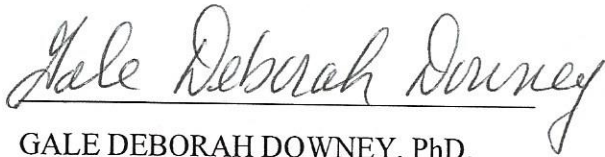
RICHELLE WORMLEY
Director
Division of Air Enforcement
New Jersey Department of
Environmental Protection



Date

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FOR DEFENDANT STONY BROOK REGIONAL SEWERAGE AUTHORITY:



GALE DEBORAH DOWNEY, PhD.
Chairman
Stony Brook Regional Sewerage Authority



Date

APPENDIX A

REQUIRED AMENDMENTS TO SBRSA'S MERCURY SAMPLING AND ANALYSIS
METHODOLOGY

In developing the Mercury Control Plan required under Paragraph 12 and performance test plan under Paragraph 14, SBRSA shall incorporate the following procedures for the collection, sampling, and analysis of mercury in SBRSA's sludge feed:

1. SBRSA shall use a SW 846 Method 7471B DEP-certified laboratory for mercury analysis.
2. SBRSA must collect grab samples in air-tight glass containers with polytetrafluoroethylene (PTFE)-lined lids. The grab samples must be filled as full as practicable to minimize headspace. SBRSA will homogenize all of the samples into one composite sample.
3. Use a glass jar with a volume of no less than 500 mL with PTFE-lined lids filled as full as practicable for the composite sludge samples. SBRSA shall submit the composite sample to a SW 846 Method 7471B DEP-certified laboratory for mercury analysis. The laboratory must then take the required aliquots for analysis from the composite sample.
4. SBRSA must conduct semi-monthly composite sampling of sludge (as set forth in Paragraph 12.a.iii), which will allow SBRSA to meet the required 28-day holding time for mercury analysis from the date that the first grab sample (of the sample composite) is collected.
5. SBRSA must increase the frequency of sludge sampling during performance tests from once every fifteen minutes to once every ten minutes.

APPENDIX B

**Standard Operating Procedure for Incinerator Operations
During Impending Inclement Weather**

Monitor Weather:

If it is raining and heavy rains are predicted:

Follow preliminary steps outlined in “River Road High Flow SOP”
at s:\operations\sop\river road high flow sop.docx

Notify the Plant Manager, Assistant Plant Manager, or their designee

**If flows continue to increase, or at a flow rate of 25 mgd on the Plant Influent Meter,
perform the following:**

Stop Belt Pressing if the flow exceeds 25 mgd and is likely that the flow will continue to increase.

Based on your judgment, stop feed to the incinerator(s), burn out and shutdown the scrubber system. If in doubt call the Plant Manager, Asst. Plant Manager or their designee. Shutting down the incinerator will minimize any potential emissions.

Shutting down the incinerator and air pollution control equipment will reduce the overall recycle flow to the plant. This is important to note when high flows are experienced, the reduction in recycle flow will reduce the hydraulic loading on the plant and biological process. This will minimize any potential discharges during these events.

If the inclement weather event is coupled with lightening follow these steps.

Monitor the weather via SCADA links, if the storm appears to have severe lightening activity, burnout the incinerator immediately. When the burnout is complete, idle the incinerator.

If the storm increases in severity or based on judgement, if in doubt call the Plant Manager, Asst. Plant Manager or their designee for guidance, shutdown the incinerator completely.

If there is an excessive heat event and/or high energy demand

When PSEG contacts the Authority of a potential brownout or blackout due to excessive heat and/or recommends a power reduction due to a high energy demand, staff will follow the incinerator burn out procedures (Notify the Plant Manager, Assistant Plant Manager or their designee).