

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and  
STATE OF NEW YORK,

Plaintiffs,

v.

HOLCIM (US) INC.,

Defendant.

CIVIL ACTION NO. 1:21-cv-490 (GTS/DJS)



**CONSENT DECREE**

**TABLE OF CONTENTS**

**I. BACKGROUND ..... 1**

**II. JURISDICTION AND VENUE..... 3**

**III. APPLICABILITY ..... 4**

**IV. DEFINITIONS ..... 5**

**V. COMPLIANCE REQUIREMENTS..... 8**

**VI. APPROVAL OF DELIVERABLES ..... 14**

**VII. REPORTING REQUIREMENTS ..... 16**

**VIII. CIVIL PENALTY ..... 19**

**IX. STIPULATED PENALTIES ..... 22**

**X. FORCE MAJEURE..... 26**

**XI. DISPUTE RESOLUTION..... 28**

**XII. INFORMATION COLLECTION AND RETENTION..... 31**

**XIII. EFFECT OF SETTLEMENT/RESERVATIONS OF RIGHTS..... 33**

**XIV. COSTS ..... 35**

**XV. NOTICES..... 35**

**XVI. EFFECTIVE DATE..... 37**

**XVII. RETENTION OF JURISDICTION..... 37**

**XVIII. MODIFICATION ..... 37**

**XIX. TERMINATION ..... 38**

**XX. PUBLIC PARTICIPATION ..... 39**

**XXI. SIGNATORIES AND SERVICE ..... 39**

**XXII. INTEGRATION..... 39**

**XXIII. APPENDIX..... 40**

**XXIV. FINAL JUDGMENT ..... 40**

## I. BACKGROUND

Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and State of New York (“New York” or “the State”), on behalf of the citizens and residents of the state and the New York State Department of Environmental Conservation (“NYSDEC”), (collectively referred to as the “Plaintiffs”) have filed a complaint (“Complaint”) concurrently with this Consent Decree, against Defendant Holcim (US) Inc. (“Holcim” or “Defendant”) alleging, *inter alia*, that Holcim and its predecessor violated Sections 301(a) and 402 of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1301(a) and 1342, and Article 17 of the New York Environmental Conservation Law (“ECL”), and regulations promulgated thereto, at its Ravena Cement Plant (“Facility” or “Ravena Facility”) located at 1916 Route 9W in Ravena, New York by failing to comply with the NYSDEC State Pollutant Discharge Elimination System (“SPDES”) Permit No. NY0005037 (the “Permit”).

The Complaint alleges that Holcim is a “person” within the meaning under Section 502(5) of the Act, 33 U.S.C. § 1362(5), and that, under the Act, Holcim is required to operate the Facility in accordance with the Permit. The Complaint further alleges that, since at least April 2015, Defendant violated the Act and Article 17 of the ECL by, *inter alia*, exceeding the effluent limitations in the Permit and by discharging partially treated leachate to tributaries of the Hudson River. The Complaint also alleges that Defendant violated the terms of various administrative consent orders between Defendant and the Plaintiffs.

In November 2011, EPA identified numerous CWA violations at Holcim’s predecessor-owned Facility including unauthorized discharges, operation and maintenance deficiencies, inadequate stormwater best management practices, and numeric effluent limit violations of the Permit going back to 2004. Holcim’s predecessor subsequently agreed to enter into an

administrative compliance order on consent with EPA, Docket No. CWA-02-2012-3062, dated September 20, 2012, to address the violations and a separate consent agreement and final order, Docket No. CWA- 02-2012-3404, dated September 12, 2012 (“EPA Consent Order), in which it agreed to pay a civil penalty of \$120,000 to resolve violations occurring between 2006 and 2011.

On December 12, 2014, NYSDEC issued an administrative order on consent (“AOC I”) to Holcim’s predecessor citing the Facility for 55 SPDES permit effluent limit violations between 2011 and 2014, and an unreported sulfuric acid spill. The AOC I included a compliance schedule and a \$131,000 civil penalty.

On October 9, 2015, NYSDEC issued a second administrative order on consent (“AOC II”) for an additional 20 SPDES permit effluent limit violations, including unauthorized discharges of partially treated landfill leachate, and assessed a civil penalty of \$118,000, of which \$59,000 was to be collected and \$59,000 was suspended provided that Defendant complied with the Order, for effluent violations from 2014 through March 2015.

Between April 2015 and the Date of Lodging, the Facility reported additional SPDES permit violations, as set forth in Appendix A.

Since entering into the EPA Consent Order, AOC I, and AOC II, Holcim has made various improvements at the Facility including but not limited to: completing upgrades to its leachate treatment system (“LTS”) in 2014 (microfiltration), 2016 (installed parallel LTS), and 2019 (redesigned LTS); completing the demolition and removal of the north and south slurry basins in June 2018; completing the installation of an impermeable geomembrane-backed French drain along the entire southern and eastern perimeter of the First Generation landfill (“FGL”) at the end of 2017; implementing an alarming system; completing stormwater best management

practices (“BMPs”) improvements at Outfalls 014, 015, and 019 in 2019/2020, including the re-routing of flows and the installation of a concrete retention basin; implementing an enhanced outfall inspection program; and implementing certain BMPs at several other stormwater outfalls including retention ponds, rip/rap, check dams, outlet pipes, and flocculant socks throughout the Facility.

Holcim has entered into this Consent Decree without the adjudication of any issue of fact or law except as provided for in Section II of this Consent Decree.

The Parties recognize, and the Court by entering this Consent Decree finds, that the 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, it is hereby ADJUDGED, ORDERED, AND DECREED as follows:

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and over the Parties.

2. Venue lies in this District pursuant to 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the Facility is located in this judicial district and the events giving rise to the claims in the Complaint arose in this judicial district.

3. For purposes of this Consent Decree, or any action or proceeding to enforce this Consent Decree, Holcim consents to the Court’s jurisdiction over this Consent Decree and any such action over Holcim, and consents to venue in this judicial district.

4. For purposes of this Consent Decree, Holcim neither admits nor denies the allegations set forth herein and in the Complaint, except that it admits that it filed monthly discharge monitoring reports with NYSDEC between April 2015 and the filing of the Complaint, some of which showed exceedances of various parameters, including, but not limited to: pH, total suspended solids, fecal coliform, aluminum, toxicity, oil and grease. Holcim further agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), and Article 17 of the ECL.

### **III. APPLICABILITY**

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

6. 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 this Consent Decree are implemented. At least thirty (30) days prior to any proposed transfer of ownership or operation of the Facility, 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 the parties listed in Section XV (Notices). Any attempt to transfer of ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

7. Within thirty (30) days after the Effective Date of the Consent Decree, 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 Consent Decree.

8. In any action to enforce this Consent Decree, Holcim shall not raise as a defense or mitigating circumstances the failure by any of its officers, directors, employees, agents, contractors, or any other person acting through Holcim or on behalf of Holcim to take any actions necessary to comply with the provisions of this Consent Decree.

#### IV. DEFINITIONS

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

- a. **“Best Management Practices”** or **“BMPs”** shall mean stormwater best management practices, including those practices that are required to be implemented, inspected, maintained, and/or replaced under the SPDES Permit and the SPDES Permit required BMP Plan;
- b. **“Best Management Practices Plan”** or **“BMP Plan”** shall mean the BMP Plan that is developed in accordance with the Industry Best Management Practices section of the SPDES Permit;
- c. **“CKD”** shall mean Cement Kiln Dust;
- d. **“Clean Water Act,” “CWA,”** or **“Act”** shall mean the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*;
- e. **“Complaint”** shall mean the complaint filed by the United States and the State of New York in this action;
- f. **“Consent Decree”** shall mean this decree and all appendices attached hereto and incorporated into this Consent Decree (listed in Section XXIII), and any modifications made hereto pursuant to Section XVIII (Modification);

- g. **“CWA SPDES Audit”** shall mean the independent third-party, Facility-wide SPDES Permit compliance audit as described in Paragraph 15 of this Consent Decree;
- h. **“Date of Entry”** shall mean the date this Consent Decree is approved and signed by a United States District Court Judge for the Northern District of New York;
- i. **“Date of Lodging”** shall mean the date on which a notice of lodging of this Consent Decree is filed with the Clerk of the Court of the United States District Court for the Northern District of New York;
- j. **“Day”** or **“Days”** shall mean, whether capitalized or not, a calendar day or days, unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, if the last day would fall on a Saturday, Sunday, or federal holiday, the period shall continue until the next business day;
- k. **“Defendant”** shall mean Holcim;
- l. **“ECL”** shall mean the New York Environmental Conservation Law;
- m. **“Effective Date”** shall mean that date described in Section XVI (Effective Date);
- n. **“EPA”** shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- o. **“FGL”** shall mean First Generation Landfill;
- p. **“Holcim”** shall mean Holcim (US) Inc., including its predecessors-in-interest, successors-in-interest, parent(s), subsidiaries and assigns;
- q. **“Landfill POA”** shall mean the plan of action to minimize and properly manage all leachate generated at the FGL and Cells A through D and to properly maintain the



integrity and effectiveness of all final cover systems at the inactive landfill areas, as set forth in Paragraph 22 of this Consent Decree;

r. **“LTS”** shall mean the leachate treatment system;

s. **“NYSDEC”** shall mean the New York State Department of Environmental Conservation and any of its successor departments or agencies;

t. **“Outfalls”** shall mean the permitted outfalls at the Facility and identified in the Facility’s Permit;

u. **“Paragraph”** shall mean a portion of this Consent Decree identified by an Arabic numeral;

v. **“Parties”** shall mean the United States, the State of New York and Holcim;

w. **“Permit”** shall mean the most current version of the NYSDEC SPDES permit for the Facility, permit number NY0005037, or, if applicable, the permit number designated upon the renewal of the present permit;

x. **“POA”** shall mean plan of action;

y. **“Section”** shall mean a portion of the Consent Decree identified by a roman numeral;

z. **“SPDES”** shall mean State Pollutant Discharge Elimination System, as established by 33 U.S.C. § 1342 and ECL Article 17;

aa. **“State”** shall mean the State of New York, acting on behalf of its citizens and residents and NYSDEC;

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

## V. COMPLIANCE REQUIREMENTS

10. Defendant shall fully comply with the terms and conditions of the Permit.

11. In addition to the general compliance requirement set forth in Paragraph 10, above, Defendant shall implement the following corrective measures.

### BMP Plan

12. Defendant shall submit to EPA and NYSDEC an updated BMP Plan within sixty (60) days of the Effective Date, which shall include the requirements in the Special Conditions - Industry BMPs section of the SPDES Permit, along with the following requirements:

a. At least monthly inspections of all stormwater BMPs, including, but not limited to, all stormwater ponds/retention ponds, flocculant socks, outlet structures, and stabilization measures;

b. Monthly measurements of sediment height (or depth) in the stormwater basins/retention ponds, and compare such measurements to the height (or depth) that would trigger a cleaning of a stormwater basin/retention pond within thirty (30) days; and

c. Inspection logs and cleaning records to be included in Defendant's quarterly reports, including but not limited to stormwater BMPs and CKD Landfill leachate discharges and seeps.

13. Defendant shall begin implementing the BMP Plan immediately upon review and approval by EPA and NYSDEC, and once fully implemented, shall achieve compliance with its SPDES permit within two (2) years from approval of the BMP Plan by EPA and NYSDEC.

O&M Plan

14. Within ninety (90) days of the Effective Date of this Consent Decree, Defendant shall submit an Operation and Maintenance Plan (“O&M Plan”) that complies with the requirements of 6 NYCRR Part 750-2.8 (disposal system operation and quality control), implement it immediately upon written approval by EPA and NYSDEC, and achieve compliance with the O&M Plan within two (2) years from the date of written approval by EPA and NYSDEC.

CWA SPDES Audit

15. Within twelve (12) months of the Effective Date of this Consent Decree, Defendant shall have an independent third-party contractor subject to review and approval by EPA and NYSDEC (which shall not be unreasonably withheld) with expertise in Clean Water Act (NPDES/SPDES) compliance at cement manufacturing facilities, as well as expertise with the 6 NYCRR Part 360 regulations, conduct a facility-wide compliance audit to evaluate Defendant’s compliance with its SPDES Permit and 6 NYCRR Part 360 regulations including, but not limited to, evaluating the following:

- a. The adequacy of sampling and analytical methods used for SPDES Permit monitoring;
- b. Whether the SPDES Outfall flow meters are properly calibrated and maintained, as required by 6 NYCRR750-2.5(a)(5);
- c. The existence of any unauthorized discharges and if any, recommended measures designed to stop the unauthorized discharges;
- d. Compliance with the Facility’s BMP Plan and O&M Plan;
- e. Compliance with all effluent limitations;

f. The status of meeting all action levels in the SPDES permit and toxicity reduction evaluation requirements, if applicable;

g. Compliance with the mercury minimization program requirements; and

h. Compliance with biological monitoring requirements.

16. Within six (6) months after starting the CWA SPDES Audit described in Paragraph 15, Defendant shall submit for EPA and NYSDEC review and approval, a report describing the compliance audit findings and any noncompliance identified as a result of the compliance audit (“CWA SPDES Audit Report”), including, as necessary, a compliance audit plan of action (“Compliance Audit POA”), along with an implementation schedule for correcting all identified noncompliance no later than six (6) months from the completion of the audit, unless a longer period of time is reasonably required and is approved by EPA and NYSDEC.

17. Upon completion of the corrective actions identified in the Compliance Audit POA approved by EPA and NYSDEC, Defendant shall submit written certification that it has corrected all noncompliance identified in the Compliance Audit POA by implementing the schedule for correcting all identified noncompliance, and certified full compliance with the Facility’s SPDES Permit.

Leachate Treatment System (“LTS”) Report

18. Within six (6) months of the Effective Date of the Consent Decree, Defendant shall submit the following LTS Report to EPA and NYSDEC:

a. A description of and engineering design plans for all structural landfill upgrades, including those to the LTS, completed since 2012, for those structural changes that are still in use;

b. The location and basis of design for the leachate equalization storage basin(s) using the 25-year, 24-hour rainfall criteria as specified in 6 NYCRR Part 363 (to include the FGL and Cells A through D), and indicating which basin(s) will be included in the SPDES permit as required equipment for the LTS, subject to review and approval by NYSDEC;

c. Details on any and all proposed changes to the current SPDES permit as a result of new LTS operations and/or discharges to the Hudson River; and

d. If the leachate storage or treatment capacity has increased in the LTS, Defendant shall notify NYSDEC of the facility expansion for the purpose of determining if a Permit modification is necessary. Notification is required by Part II of the SPDES permit and in 6 NYCRR Part 750-2.6 (Special Reporting Requirements for Dischargers that are not POTWs).

#### LTS Pumps

19. Within (30) days of the Effective Date of this Consent Decree, Defendant shall submit written certification that:

a. All existing leachate pump stations have high-level alarms wired to the control room and that routine checks on pump stations and high-level alarms are part of Defendant's O&M Plan and/or BMP Plan and Computerized Maintenance Management System; and

b. The Facility has at least two spare pumps on hand at the Facility that can be installed in case of a pump failure for any pump station which does not have a second pump installed in the wet wells and that this certification is incorporated in the O&M Plan. Defendant must certify that it has emergency access to a vacuum truck to pump down a pump station wet well in case a spare pump cannot be brought on-line.

20. Prior to operating any new wastewater or leachate treatment system pump stations at the Facility, Defendant shall install alarms at all such new pump stations. Within thirty (30) days of commencement of operation of a new wastewater or leachate treatment system pump station, Defendant shall submit the written certification required by paragraph 19.

CKD Landfill Assessment and POA

21. Landfill Assessment. Upon the Effective Date of the Consent Decree, and over a six (6) month period (which period shall not include the winter months of December, January, and February), Defendant shall undertake a comprehensive landfill assessment of all CKD disposal areas in order to evaluate the integrity and effectiveness of all final cover areas and all leachate containment/collection systems (“Comprehensive Landfill Assessment”). At a minimum, the Comprehensive Landfill Assessment shall include the following: (i) develop an inventory and map of all leachate collection/storage/treatment components; (ii) conduct weekly inspections of all CKD disposal areas (active and inactive), which shall include a description and the location of all leachate seeps and outbreaks; (iii) Identify all areas of exposed CKD at the FGL and Cells A through D; (iv) reporting any unauthorized discharges from the landfills to a water of the United States or State in accordance with the Permit and 6 NYCRR Part 750-2.7, and (v) eliminate such unauthorized discharges in accordance with the Landfill POA and/or the CWA SPDES Audit.

22. Landfill POA. Within twelve (12) months of completing the Comprehensive Landfill Assessment in accordance with the schedule set forth in Paragraph 21, Defendant shall submit to NYSDEC, for review and approval, and to EPA for review and comment, a Landfill POA with schedule for implementation: 1) to minimize and properly manage all leachate generated at the FGL and Cells A through D; and 2) to properly maintain the integrity and

effectiveness of all final cover systems at the inactive landfill areas. The Landfill POA shall identify specific measures necessary at the FGL and Cells A through D to eliminate seeps, to ensure leachate generation is minimized, and leachate is collected and treated by the LTS. Defendant shall implement the Landfill POA, in accordance with the schedule for implementation, upon approval by NYSDEC.

Solid Waste Management Facility Permit Renewal Application

23. The Facility submitted an application for the renewal of its solid waste management facility permit in 2007 and has been operating under the administratively-extended solid waste management (“SWM”) facility permit since that time. At the request of NYSDEC, the Facility submitted revised applications to NYSDEC in 2014 and 2016, and NYSDEC has issued Notices of Incomplete Application to the Facility.

24. On November 4, 2017, NYSDEC adopted revisions to the requirements for solid waste management facilities, modifying the requirements of 6 NYCRR Parts 360 and 363.

25. Within twelve (12) months of the Effective Date of the Consent Decree, Defendant shall prepare and submit to NYSDEC a revised SWM facility permit renewal application, which addresses the updated requirements referenced in Paragraph 24. In order to demonstrate compliance with Part 360 requirements for minimizing the generation of leachate and preventing the migration of leachate into surface and groundwater, and in addition to what is required by the Permit Renewal requirements of Parts 360.16(g) and 363, the revised SWM permit application shall include a proposed design and leachate management plan for a permanent leachate minimization, control, collection and treatment system for all CKD disposal areas, subject to the ECL, which includes the following:

- a. Engineer’s Report (leachate storage & treatment);

- b. Summary of the Basis of Design (leachate storage & treatment);
- c. Operational Oversight & Staffing Plan;
- d. Process Control Diagram & Plan (With data since startup of new system);
- e. General Layout;
- f. Detailed Plans;
- g. Specifications;
- h. SPDES Permit Required Discharge Monitoring Report Data (since startup of the new LTS in January 2019); and
- i. Preventive Maintenance Plan (for the new LTS as required by General Requirements of the SPDES Permit and 6 NYCRR Part 750-2.8).

#### **VI. APPROVAL OF DELIVERABLES**

26. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA and/or NYSDEC (as applicable) 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. EPA and /or NYSDEC (as applicable) shall use reasonable efforts to review and comment on all such deliverables within sixty (60) days of receipt from Defendant. Further, any deadlines imposed on the Defendant under this Consent Decree relating to a submission shall be automatically extended by the amount of time after sixty (60) days that comment from EPA and /or the NYSDEC (as applicable) on such submission is withheld or delayed. The revised solid waste management facility permit renewal application shall require the review and comment of only NYSDEC.



27. If the submission is approved pursuant to Paragraph 26(a), Defendant 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 pursuant to Paragraph 26(b) or (c), Defendant shall, upon written direction from EPA and/or NYSDEC, take all actions required by the approved plan, report, or other item that EPA and/or NYSDEC determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section XI (Dispute Resolution). If Defendant elects to invoke Dispute Resolution as set forth in Paragraphs 65 or 66, Defendant shall do so by sending a Notice of Dispute in accordance with Paragraph 65 within thirty (30) Days after receipt of the applicable decision.

28. If the submission is disapproved in whole or in part pursuant to Paragraph 26(c) or (d), Defendant shall, within forty-five (45) days or such other 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 30.

29. Any stipulated penalties applicable to the original submission, as provided in Section IX (Stipulated Penalties), shall accrue during the forty-five (45) day period 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 Defendant's obligations under this Consent Decree, the stipulated penalties

applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

30. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA and/or NYSDEC may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to Defendant's right to invoke Dispute Resolution procedures set forth in Section XI (Dispute Resolution) and the right of EPA and/or NYSDEC to seek stipulated penalties as provided in the preceding paragraphs and Section IX (Stipulated Penalties).

31. Permits. Where any compliance under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section X (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, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

## **VII. REPORTING REQUIREMENTS**

32. Quarterly Reports. Starting after the first full calendar quarter after the Effective Date of the Consent Decree, within thirty (30) days after the end of each calendar quarter (i.e., by April 30, July 30, October 30, and January 30), until termination of this Consent Decree pursuant to Section XIX (Termination), Defendant shall submit in writing to EPA and NYSDEC a quarterly report ("Quarterly Report") for the preceding quarter, except that the first report shall

address the preceding quarter and any additional time period since the Effective Date of the Consent Decree, that shall include:

a. A description of the work completed during the preceding three months of all items identified in Section V (Compliance Requirements), including (i) status of any compliance measures, (ii) completion of milestones, (iii) problems encountered or anticipated, together with implemented or proposed solutions; and (iv) reports to State agencies;

b. A description of the work planned for the subsequent three-month period of all items identified in Section V (Compliance Requirements);

c. A description of any requirements of this Consent Decree which were not complied with, the dates of such non-compliance, and an explanation of the violation's likely cause and the remedial steps taken, or to be taken, to prevent or minimize such non-compliance; and

d. If Defendant has already submitted a deliverable to the EPA, NYSDEC, the State, and/or the United States, Defendant shall in the Quarterly Report reference that deliverable and its date of submission.

33. If Defendant violates any requirement of this Consent Decree, Defendant shall notify the United States and the State of such violation and its likely duration, in writing, within ten (10) business days of the day Defendant first becomes aware of the violation, with an explanation of the violation's cause, if known, and of the remedial steps taken, or to be taken, to prevent 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 the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) 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 the notice required by Section X (Force Majeure).

34. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Consent Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA and the State orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

35. All reports shall be submitted to the persons designated in Section XV (Notices).

36. All Quarterly Reports, any other report, notice, protocol, plan, or any other document submitted by Defendant under this Section shall be signed by 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 am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

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

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

#### **VIII. CIVIL PENALTY**

40. Defendant agrees to pay a penalty of \$850,000 to settle this action by the United States and the State as set forth below.

41. Within thirty (30) days after the Effective Date, Defendant shall pay to the United States the sum of \$425,000 as a civil penalty, together with interest accruing thereon from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. Defendant shall pay the civil penalty due to the United States by electronic funds transfer pursuant to written instructions provided by the Financial Litigation Unit (“FLU”) of the USAO within thirty (30) days after the Effective Date (Section XVI). The payment instructions provided by the FLU shall 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:

Adam G. Sowatzka  
Partner  
King & Spalding LLP  
1180 Peachtree Street  
Atlanta, GA 30309  
asowatzka@kslaw.com  
404-572-3508

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XV (Notices).

42. At the time of payment set forth in paragraph 41, Defendant shall send notice that payment has been made: (i) to the EPA Cincinnati Finance Office by e-mail at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States by e-mail or regular mail in accordance with Section XV (Notices); and (iii) to EPA by mail in accordance with Section XV (Notices). Such notice shall reference the CDCS Number, USAO number 2017V01229, and DOJ case number 90-5-2-1-08221/8.

43. Within thirty (30) days after the Effective Date, Defendant shall pay to New York the sum of \$213,000 as a civil penalty, together with interest accruing thereon from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. Defendant shall pay the civil penalty due to New York to the Office of the Attorney General of the State of New York, via wire transfer with written notice delivered to Joseph M. Kowalczyk, Assistant Attorney General, Environmental Protection Bureau, The Capitol, Albany, New York 12224-0341. Such wire transfer shall be remitted by Defendant to the Office of the Attorney General within thirty (30) days after the Effective Date of this Consent Decree

44. State Environmental Benefit Project (“EBP”).

a. For the purpose of funding an EBP, Defendant shall pay to New York the sum of \$212,000, together with interest accruing thereon from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. Defendant shall make this payment due to New York to the Office of the Attorney General of the State of New York, by wire transfer with written notice delivered to Joseph M. Kowalczyk, Assistant Attorney General, Environmental Protection Bureau, The Capitol, Albany,

New York 12224-0341. Such wire transfer shall be remitted by Defendant to the Office of the Attorney General within thirty (30) days after the Effective Date of this Consent Decree.

b. Consistent with NYSDEC CP-37, Environmental Benefit Project Policy, the EBP will conserve, improve, and protect New York's natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the Town of Coeymans (the "Town") and their overall economic and social well-being. The EBP monies will be expended by the Town as reasonable engineering costs and the Town's share in applying for a 2021 New York State Environmental Facilities Corporation Green Innovation Grant Program ("GIGP") Green Stormwater Infrastructure grant for innovative green stormwater infrastructure practices incorporating bioretention in concert with paving and curbing modifications at Coeymans Landing Park. The EBP will be designed, engineered, and constructed by the Town to reduce harmful stormwater runoff into the Hudson River and will not include any proposed improvements to the boat launch at Coeymans Landing Park or any other facilities under NYSDEC control.

c. The Town's GIGP application consists of three components: Project Area 1, reworking an upper parking area with appropriate curbing, stormwater street trees and hydraulically connected bioretention areas; Project Area 2, parking lot reconstruction with hydraulically connected bioretention areas; and Project Area 3, loop road with improvements including appropriate curbing, stormwater street trees, and bioswales. In the event that a GIGP grant is awarded to the Town during the 2021 grant cycle, the balance of the EBP monies will be used exclusively for the EBP. In the event a GIGP grant is not awarded to the Town during the 2021 grant cycle, the balance of the EBP monies will be used by the Town exclusively for funding construction of the Project Area 1 improvements, including reworking the upper parking

area with stormwater street trees, hydraulically connected bioretention areas, and a mill/fill to pitch roadway stormwater toward the bioretention areas.

d. Public statements or representations made by Defendant regarding the EBP shall expressly state that the projects were funded pursuant to a consent decree resolving a civil action brought by the Attorney General on behalf of NYSDEC and the citizens and residents of the state to enforce New York State's Environmental Conservation Law

45. Upon the Effective Date, this Consent Decree shall constitute an enforceable judgment for purposes of post-judgment collection, in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, and any other applicable federal authority. The United States and the State will be deemed judgment creditors for purposes of collecting each Party's respective portion of any unpaid amounts of the penalty and interest due pursuant to this Section, or any stipulated penalty owed pursuant to Section IX of this Consent Decree.

46. Defendant shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section IX in calculating its federal, state or local income tax.

#### **IX. STIPULATED PENALTIES**

47. Subject to Section XI (Dispute Resolution), Defendant shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, upon demand, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.



48. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid pursuant to Section VIII (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$5,000 per day for each day that the payment is late.

49. Compliance Requirements.

a. The following stipulated penalties shall accrue per violation per day for each violation of the requirements identified in Section V (Compliance Requirements):

Penalty Per Violation Per Day	Period of Noncompliance
\$500.00	1 <sup>st</sup> through 30 <sup>th</sup> day
\$1,000.00	31 <sup>st</sup> through 59 <sup>th</sup> day
\$2,000.00	60 <sup>th</sup> day and beyond

For purposes of clarity, any findings discovered as part of the CWA SPDES Audit in Paragraph 15 or identified in the CWA SPDES Audit Report set forth in Paragraph 16 above are not subject to stipulated penalties.

b. The following stipulated penalties shall accrue per parameter per Outfall per day for each violation of an applicable daily maximum effluent limitation contained in the SPDES Permit:

Penalty Per Violation Per Day	Period of Noncompliance
\$500.00	First Daily Maximum Violation
\$1,000.00	Second Daily Maximum Violation
\$2,000.00	Third and Subsequent Daily Maximum Violation

c. The following stipulated penalties shall accrue per parameter per Outfall for each violation of an applicable monthly average effluent limitation:

Penalty Per Violation Per Day	Period of Noncompliance
\$1,000.00	First Monthly Average Violation

\$2,000.00	Second Monthly Average Violation
\$3,000.00	Third and Subsequent Monthly Average Violation

50. Reporting Requirements. The following stipulated penalties shall accrue per violation per day for each violation of the reporting requirements set forth in Section VII (Reporting Requirements):

Penalty Per Violation Per Day	Period of Noncompliance
\$500.00	1 <sup>st</sup> through 30 <sup>th</sup> day
\$1,000.00	31 <sup>st</sup> through 59 <sup>th</sup> day
\$1,500.00	60 <sup>th</sup> day and beyond

51. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day that 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.

52. Defendant shall pay stipulated penalties described herein to the United States or the State, as directed in Section XV (Notices). Defendant shall pay any stipulated penalty within thirty (30) days of receiving a written demand from either Plaintiff. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff. Defendant shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent to the State.

53. Stipulated penalties shall continue to accrue as provided in this Section during any Dispute Resolution (Section XI), but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA or the State that is not appealed to the Court, Defendant shall pay accrued penalties

determined to be owing, together with interest, to the United States or the State within thirty (30) days of the effective date of the Parties' agreement or the receipt of EPA's or the State's decision or order;

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) days of receiving the Court's decision or order, except as provided in subparagraph c., below; and

c. If any Party appeals the Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) days of receiving the final appellate court decision.

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

55. NYSDEC may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree, but only if expressly in writing executed by the Commissioner of NYSDEC or the Commissioner's duly authorized designee.

56. Defendant shall pay stipulated penalties owing to the United States and the State in the manner set forth and with the confirmation notices required by Paragraphs 41, 42 and 44, 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.

57. 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 Section shall be

construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

58. Non-Exclusivity of Remedy. Stipulated penalties are not the Plaintiffs' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the Plaintiffs expressly reserve the right to seek any other relief the deem appropriate for Defendant's violation of this Consent Decree or applicable law, 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 pursuant to this Consent Decree for that particular violation.

#### **X. FORCE MAJEURE**

59. "Force Majeure," for purposes of this Consent Decree, shall mean any event arising from causes beyond the control of the Defendant, of any entity that controls, is controlled by, or is under common control of the Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the 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 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, and any adverse effects of the delay, to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Judgment, Defendant shall provide notice to EPA and NYSDEC orally, and by electronic transmission and certified mail to the United States and the State, in accordance with the notice provisions of Section XV (Notices), within 72 hours of when Defendant first knew or should have known that the event might cause a delay. Within seven (7) Days thereafter, Defendant shall provide in writing to the United States and the State 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 the 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 requirements of this paragraph 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 that controls, is controlled by, or is under common control of Defendant, or Defendant's contractors knew or should have known.

61. If the United States and the State agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent 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 shall not, of itself, extend the time for performance of any other obligation. The United States and the State will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

62. If the United States and the State do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, Plaintiffs will notify Defendant in writing of their decision.

63. If Defendant elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), with regard to a Force Majeure determination, it shall do so no later than twenty-one (21) days after receipt of Plaintiffs' 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 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 this Section of the Consent Decree. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligations of this Consent Decree identified to the Plaintiffs and the Court.

#### **XI. DISPUTE RESOLUTION**

64. 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 or the State to enforce any obligation of Defendant arising under this Consent Decree.

65. 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 when Defendant sends the Plaintiffs a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) 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 Plaintiffs shall be considered binding unless, within fourteen (14) days after the conclusion of the informal negotiation period, Defendant invokes the formal dispute resolution procedures as set forth below.

66. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the Plaintiffs 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 Defendant's position and any supporting documentation relied upon by Defendant.

67. Plaintiffs shall serve their Statement of Position upon Defendant within sixty (60) days of receipt of Defendant's Statement of Position. Plaintiffs' Statement of Position shall include, but need not be limited to, factual data, analysis, or opinion supporting that position and supporting documentation relied upon by the Plaintiffs. Plaintiffs' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute, in accordance with the following Paragraph.

68. Defendant may seek judicial review of the dispute by filing with the Court and serving on the Plaintiffs, in accordance with Section XV (Notices), a motion requesting judicial resolution of the dispute. The motion (or, if the Court requires the filing of a pre-motion letter before the filing of a motion, pre-motion letter) must be filed within thirty (30) days of receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph. 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.

69. Plaintiffs shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court or by Court order modifying such time period. Defendant may file a reply memorandum, to the extent permitted by the Local Rules, or by Court order.

70. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought pursuant to this Section pertaining to the adequacy or appropriateness of Defendant's submissions or filings, schedules or any other items requiring approval by EPA and NYSDEC 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 or the State is arbitrary and capricious, or otherwise not in accordance with law.



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

71. 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. 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 Paragraph 53. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

## **XII. INFORMATION COLLECTION AND RETENTION**

72. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility covered by this Consent Decree, during all hours of operation, upon presentation of credentials, to:

- a. Monitor the progress of activities required under this Consent Decree, including, but not limited to, inspecting any equipment, practices, operations or records regulated under any permit or order;
- b. Verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. Obtain samples and splits of any samples taken by Defendant or its representatives, contractors or consultants;

d. Obtain documentary evidence, including photographs and similar data;  
and

e. Assess Defendant's compliance with the Consent Decree.

73. Upon request, Defendant shall provide EPA and NYSDEC or their authorized representatives splits of any samples taken by Defendant. Upon request, EPA and NYSDEC shall provide Defendant splits of any samples taken by EPA or NYSDEC.

74. Until three 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 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 or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Defendant shall provide copies of any non-privileged documents, records, or other information required to be maintained under this Paragraph to the United States and the State.

75. At the conclusion of the information-retention period provided in Paragraph 74, Defendant shall notify the United States and the State at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of Paragraph 74 and, upon request by the United States or the State, Defendant shall deliver any such documents, records, or other information to EPA and NYSDEC. Defendant 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 Defendant 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 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.

76. 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.

77. 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 or the State pursuant to applicable 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 laws, regulations, or permits.

### **XIII. EFFECT OF SETTLEMENT/RESERVATIONS OF RIGHTS**

78. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in this Paragraph.

79. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under any laws or implementing regulations,

or under other federal or state laws, regulations, or permit conditions except as expressly specified in Paragraph 78. The United States and the State 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, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

80. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, or other appropriate relief relating to Defendant's violations, Defendant 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 the State 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 78.

81. 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 by the United States or the State pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their 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 any provision of the Act or the ECL, or with any other provisions of federal, state, or local laws, regulations, or permits.

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

83. This Consent Decree does not limit or affect the rights of Defendant or of the United States or the State 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.

84. 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.

#### **XIV. COSTS**

85. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including reasonable 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.

#### **XV. NOTICES**

86. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing, include a reference to the case name, caption and docket number of this action, and sent by electronic and regular mail as follows:

As to the United States by email: eescasemanagement\_enrd@usdoj.gov  
Re: DJ # 90-5-2-1-08221/8

As to the United States by mail: Chief, Civil Division  
United States Attorney's Office  
Northern District of New York  
445 Broadway, Rm. 218  
Albany, NY 12207

Chief, Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Re: DJ # 90-5-2-1-08221/8

Phyllis Feinmark, Chief  
Water and General Law Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007  
feinmark.phyllis@epa.gov

Douglas McKenna, Chief  
Water Compliance Branch  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 20th Floor  
New York, NY 10007  
Mckenna.douglas@epa.gov

As to the State:

Chief, Affirmative Litigation Section  
State of New York  
Office of the Attorney General  
Environmental Protection Bureau  
The Capitol  
Albany, NY 12224-0241

Regional Director  
NYSDEC Region 4  
1130 North Westcott Road  
Schenectady, NY 12306-2014

As to Holcim:

Plant Manager  
Ravena Cement Facility  
1916 US Route 9W  
Ravena, NY 12134

Legal Department  
Holcim (US) Inc.  
8700 W. Bryn Mawr Ave., Suite 300  
Chicago, IL 60631

Adam G. Sowatzka

King & Spalding, LLP  
1180 Peachtree Street, NE  
Atlanta, GA 30309

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

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

#### **XVI. 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.

#### **XVII. RETENTION OF JURISDICTION**

90. The Court shall retain jurisdiction over this action until termination of this Consent Decree, for the purposes of resolving disputes arising under this Consent Decree, or entering orders modifying this Consent Decree, pursuant to Sections XI (Dispute Resolution) and XVIII (Modification) of this Consent Decree, or effectuating or enforcing compliance with the terms of this Consent Decree.

#### **XVIII. MODIFICATION**

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

92. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 70, 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).

### **XIX. TERMINATION**

93. After Defendant has: (i) completed all of the requirements set forth in Section V (Compliance Requirements), Section VII (Reporting Requirements), and all other requirements of this Consent Decree to the satisfaction of the United States and the State; and (ii) has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the Plaintiffs a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

94. Following receipt by the United States and the State 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 and the State agree that this Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

95. If the United States or the State does not agree that the Consent Decree may be terminated, Defendant may invoke Dispute Resolution under Section XI (Dispute Resolution) of this Consent Decree. However, Defendant shall not seek Dispute Resolution under Paragraph 66 (Formal Dispute Resolution) of any dispute regarding termination until ninety (90) days after service of its Request for Termination.



## **XX. PUBLIC PARTICIPATION**

96. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and the State reserve the right to withdraw or withhold their consent to the entry of this Consent Decree 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 this Consent Decree, unless the United States or the State has notified Defendant in writing that it no longer supports entry of this Consent Decree.

## **XXI. SIGNATORIES AND SERVICE**

97. Each undersigned representative of Defendant, the U.S. Attorney's Office for the Northern District of New York, the New York State Attorney General, and the Assistant Attorney General for the Environment and Natural Resources Division of 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 Consent Decree.

98. 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 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.

## **XXII. INTEGRATION**

99. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. For purposes of clarity, EPA Consent Order, AOC I, and AOC II are superseded by this Consent Decree. Other than deliverables that are to be subsequently submitted and approved pursuant to this Consent Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

**XXIII. APPENDIX**

100. The following appendix is attached to and part of this Consent Decree: “Appendix A” is a list of SPDES Permit violations at the Facility between April 2015 and the Date of Lodging.

**XXIV. FINAL JUDGMENT**

101. 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, the State and Defendant. The Court finds there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

\* \* \* \* \*

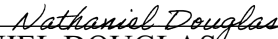
DATED and ENTERED this \_\_\_\_ Day of \_\_\_\_\_, 2021:

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE  
Northern District of New York

The Parties, by their undersigned representatives, enter into this Consent Decree in the matter of *United States and State of New York v. Holcim (US) Inc.*

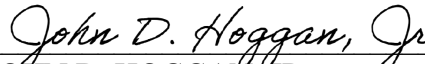
**FOR THE PLAINTIFF UNITED STATES OF AMERICA:**

Washington, D.C.  
March 19, 2021

  
\_\_\_\_\_  
NATHANIEL DOUGLAS  
Deputy Section Chief  
Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice

Albany, New York  
March 22, 2021

ANTOINETTE T. BACON  
Acting United States Attorney for the  
Northern District of New York

By:   
\_\_\_\_\_  
JOHN D. HOGGAN, JR.  
Assistant United States Attorney  
United States Attorney's Office  
Northern District of New York

Attorneys for the United States of America

Consent Decree Signature - *United States and State of New York v. Holcim (US) Inc*

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

Washington, D.C.  
April 26, 2021

Rosemarie  
Kelley

Digitally signed by  
Rosemarie Kelley  
Date: 2021.04.26  
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ROSEMARIE A. KELLEY  
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Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Consent Decree Signature - *United States and State of New York v. Holcim (US) Inc*

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

New York, New York  
\_\_\_\_\_, 2021

**Schaaf, Eric** Digitally signed by Schaaf, Eric  
Date: 2021.04.12 15:01:36  
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ERIC SCHAAF  
Regional Counsel  
U.S. Environmental Protection Agency, Region 2

KARA E. MURPHY  
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Water and General Law Branch  
U.S. Environmental Protection Agency, Region 2

**FOR THE PLAINTIFF STATE OF NEW YORK:**

Albany, New York  
April 1, 2021

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

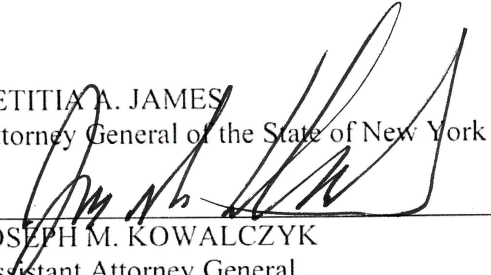


THOMAS S. BERKMAN  
Deputy Commissioner and General Counsel  
New York State Department of Environmental  
Conservation

Albany, New York  
April 19, 2021

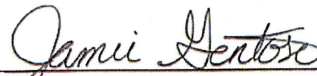
LETITIA A. JAMES  
Attorney General of the State of New York

By:

  
JOSEPH M. KOWALCZYK  
Assistant Attorney General  
Environmental Protection Bureau

**FOR THE DEFENDANT HOLCIM (US) INC.:**

Chicago, Illinois  
March 27, 2021



JAMIE M. GENTOSO, P.E.  
Chief Executive Officer  
Holcim (US) Inc.

Atlanta, Georgia  
March 24, 2021, 2021



ADAM G. SOWATZKA  
Partner  
King & Spalding LLP

# **APPENDIX A**



<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Apr-15	23A	Coliform, fecal general	#/100mL	1	400	>1600
May-15	23A	BOD, carbonaceous [5 day, 20 C]	mg/L	1	45	133
May-15	23A	BOD, carbonaceous [5 day, 20 C]	mg/L	30	30	75.1
May-15	003	pH	SU	1	9	9.3
Jun-15	23A	BOD, carbonaceous [5 day, 20 C]	mg/L	1	45	148
Jun-15	23A	BOD, carbonaceous [5 day, 20 C]	mg/L	30	30	70
Jun-15	23B	pH	SU	1	6 to 9	5.8
Jun-15	003	Temp. diff. between up/down stream deg. F	deg F	1	2	2.2
Jul-15	23A	BOD, carbonaceous [5 day, 20 C]	mg/L	30	30	95
Jul-15	003	Temp. diff. between up/down stream deg. F	deg F	14	2	2.6

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Jul-15	23A	BOD, carbonaceous [5 day, 20 C]	mg/L	1	45	297
Aug-15	003	pH	SU	2	9	9.26
Aug-15	003	Temp. diff. between up/down stream deg. F	deg F	18	2	3.9
Sep-15	23A	Coliform, fecal general	#/100mL	30	200	418
Sep-15	23A	Coliform, fecal general	#/100mL	1	400	>1600
Sep-15	003	pH	SU	1	9	9.2
Sep-15	003	Temp. diff. between up/down stream deg. F	deg F	19	2	3.5
Sep-15	006	Solids, total suspended	mg/L	30	25	33.3
Sep-15	014	Solids, settleable	mL/l	1	0.1	0.3
Oct-15	003	pH	SU	1	6	5.64
Oct-15	003	Solids, total suspended	mg/L	2	50	56.7
Nov-15	023	pH	SU	1	9	12.7
Dec-15	007	Solids, settleable	mL/l	1	0.1	0.6
Dec-15	007	Solids, total suspended	mg/L	1	45	177

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Dec-15	007	Solids, total suspended	mg/L	30	25	177
Dec-15	007	pH	SU	1	9	10.4
Dec-15	023	pH	SU	9	9	12.5
Dec-15	023	pH	SU		6	2.5
Dec-15	023	Solids, total suspended	mg/L	1	20	79
Dec-15	23A	Solids, settleable	mL/l	1	0.1	0.6
Jan-16	023	Aluminum, total	ug/l	1	4000	4100
Jan-16	023	Aluminum, total	ug/l	30	2000	2300
Jan-16	023	pH	SU	1	9	9.1
Jan-16	023	Solids, total suspended	mg/L	1	20	94
Jan-16	23B	Aluminum, total	ug/l	1	4000	4970
Jan-16	23B	Aluminum, total	ug/l	30	2000	4700
Jan-16	23B	Solids, total suspended	mg/L	2	20	120
Jan-16	25A	pH	SU	1	8.5	8.8

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Feb-16	003	pH	SU	1	9	9.12
Feb-16	003	Solids, total suspended	mg/L	1	50	128
Feb-16	023	Aluminum, total	ug/l	1	4000	7770
Feb-16	023	Aluminum, total	ug/l	30	2000	4470
Feb-16	023	Solids, total suspended	mg/L	1	20	113
Feb-16	23A	Chlorine, total residual	ug/l	1	2000	3400
Feb-16	23B	Aluminum, total	ug/l	1	4000	13100
Feb-16	23B	Aluminum, total	ug/l	30	2000	7200
Feb-16	23B	Solids, settleable	mL/l	1	0.1	11
Feb-16	23B	Solids, total suspended	mg/L	1	20	174
Feb-16	25A	pH	SU	1	8.5	10.39
Mar-16	003	Solids, settleable	mL/l	1	0.1	0.6
Mar-16	003	Solids, total suspended	mg/L	1	50	194
Mar-16	023	Aluminum, total	ug/l	1	4000	4240
Mar-16	023	Aluminum, total	ug/l	30	2000	3062
Mar-16	023	Solids, total suspended	mg/L	9	20	180

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Mar-16	23A	Chlorine, total residual	ug/l	1	2000	3190
Mar-16	23B	Aluminum, total	ug/l	6	4000	10100
Mar-16	23B	Aluminum, total	ug/l	30	2000	4212
Mar-16	23B	Solids, total suspended	mg/L	12	20	190
Mar-16	25A	pH	SU	1	8.5	9.1
Apr-16	003	pH	SU	1	9	9.6
Apr-16	007	Solids, settleable	mL/l	1	0.1	0.4
Apr-16	007	Solids, total suspended	mg/L	1	45	63.5
Apr-16	007	Solids, total suspended	mg/L	30	25	63.5
Apr-16	023	Aluminum, total	ug/l	3	4000	5840
Apr-16	023	Aluminum, total	ug/l	30	2000	2829
Apr-16	023	Solids, total suspended	mg/L	6	20	91
Apr-16	23B	Aluminum, total	ug/l	12	4000	11100
Apr-16	23B	Aluminum, total	ug/l	30	2000	4460
Apr-16	23B	Solids, settleable	mL/l	2	0.1	0.6
Apr-16	23B	Solids, total suspended	mg/L	13	20	147

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Apr-16	25A	pH	SU	3	8.5	9
May-16	003	Solids, total suspended	mg/L	1	50	508
May-16	003	pH	SU	1	9	9.4
May-16	023	Aluminum, total	ug/l	2	4000	6830
May-16	023	Aluminum, total	ug/l	30	2000	3585
May-16	023	Solids, total suspended	mg/L	7	20	191
May-16	23B	Aluminum, total	ug/l	9	4000	10500
May-16	23B	Aluminum, total	ug/l	30	2000	5230
May-16	23B	Solids, total suspended	mg/L	15	20	203
May-16	25A	pH	SU	3	8.5	8.6
Jun-16	003	Solids, settleable	mL/l	1	0.1	0.4
Jun-16	003	Temp. diff. between up/down stream deg. F	deg F	14	2	3.5
Jun-16	023	Aluminum, total	ug/l	3	4000	7140
Jun-16	023	Aluminum, total	ug/l	30	2000	4325
Jun-16	023	Solids, total suspended	mg/L	7	20	152

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Jun-16	23B	Aluminum, total	ug/l	13	4000	11900
Jun-16	23B	Aluminum, total	ug/l	30	2000	6282
Jun-16	23B	Solids, settleable	mL/l	1	0.1	6.5
Jun-16	23B	Solids, total suspended	mg/L	13	20	114
Jun-16	003	Solids, total suspended	mg/L	1	50	114
Jul-16	003	Temp. diff. between up/down stream deg. F	deg F	17	2	3.6
Jul-16	023	Solids, total suspended	mg/L	6	20	114
Jul-16	23B	Solids, settleable	mL/l	2	0.1	0.8
Jul-16	23B	Solids, total suspended	mg/L	6	20	880
Jul-16	25A	pH	SU	1	8.5	8.8
Aug-16	003	Temp. diff. between up/down stream deg. F	deg F	10	2	3.7
Aug-16	023	Solids, total suspended	mg/L	5	20	108
Aug-16	23B	Solids, settleable	mL/l	1	0.1	3
Aug-16	23B	Solids, total suspended	mg/L	6	20	110

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Aug-16	25A	pH	SU	2	8.5	8.8
Sep-16	003	Temp. diff. between up/down stream deg. F	deg F	1	2	2.6
Sep-16	023	Solids, total suspended	mg/L	1	20	49.5
Sep-16	23B	Solids, total suspended	mg/L	1	20	110
Sep-16	25A	pH	SU	1	8.5	8.8
Oct-16	003	Solids, total suspended	mg/L	1	50	85.5
Oct-16	23A	Chlorine, total residual	ug/l	1	2000	2100
Oct-16	23B	Solids, settleable	mL/l	1	0.1	23
Oct-16	23B	Solids, total suspended	mg/L	1	20	274
Oct-16	23B	Aluminum, total	ug/l	30	2000	2830
Nov-16	021	Solids, total suspended	mg/L	30	25	25.1
Nov-16	025	Solids, total suspended	mg/L	30	25	736
Nov-16	025	Solids, settleable	mL/l	1	0.1	2.2
Nov-16	025	Solids, total suspended	mg/L	1	45	736
Nov-16	23B	Solids, settleable	mL/l	1	0.1	49



<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Nov-16	23B	Solids, total suspended	mg/L	1	20	223
Dec-16	006	TSS	mg/L	1	45	168
Dec-16	006	TSS	mg/L	30	25	92.9
Dec-16	023	Aluminum, total	ug/l	1	4000	17000
Dec-16	023	Aluminum, total	ug/l	30	2000	17000
Dec-16	023	TSS	mg/L	1	20	96
Dec-16	023	Acute Toxicity (C. dubia)	Tua	Action Level	15	21.5
Dec-16	023	Chronic Toxicity (C. dubia)	Tuc	Action Level	90	215
Dec-16	023	Chronic Toxicity (P. promelas)	Tuc	Action Level	90	113
Dec-16	23B	Solids, settleable	ml/l	2	0.1	85
Dec-16	23B	TSS	mg/L	2	20	400
Jan-17	007	Solids, total suspended	mg/L	30	25	28
Jan-17	021	Solids, total suspended	mg/L	30	25	60.4
Jan-17	021	Solids, total suspended	mg/L	1	45	60.4

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Jan-17	23B	Solids, total suspended	mg/L	1	20	64
Jan-17	024	pH	SU	1	9	9.38
Jan-17	025	Solids, total suspended	mg/L	30	25	93.2
Jan-17	025	Solids, total suspended	mg/L	1	45	93.2
Feb-17	023	Oxygen, dissolved [DO]	mg/L	1	2	0.2
Feb-17	024	pH	SU	1	9	9.3
Feb-17	025	Solids, total suspended	mg/L	30	25	38
Feb-17	023B	Solids, total suspended	mg/L	1	20	26
Mar-17	015	Solids, settleable	mL/L	1	0.1	0.2
Mar-17	015	Solids, total suspended	mg/L	1	50	62.8
Mar-17	023	Toxicity [chronic], Ceriodaphnia dubia	tox chronic	Action Level	90	96.2
Mar-17	023B	Solids, total suspended	mg/L	1	20	31
Apr-17		Unauthorized Discharge of Leachate from A/B Pump Station - Flooded		5	4/5 to 4/10/17	

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Apr-17	003	Solids, total suspended	mg/L	1	50	58
Apr-17	007	Solids, total suspended	mg/L	30	25	55.5
Apr-17	007	Solids, total suspended	mg/L	1	45	55.5
Apr-17	021	Solids, total suspended	mg/L	30	25	34
Apr-17	023	Aluminum, total [as Al]	ug/L	30	2000	3260
Apr-17	023	Solids, total suspended	mg/L	1	20	43
Apr-17	025	Solids, total suspended	mg/L	30	25	56.3
Apr-17	025	Solids, total suspended	mg/L	1	45	56.3
May-17		Unauthorized Discharge of Leachate from A/B Pump Station - Flooded		2	5/7/17 to 5/8/17	
May-17		Unauthorized Discharge of Leachate from C/D Pump Station - Flooded		2	5/7/17 to 5/8/17	
May-17	007	Solids, total suspended	mg/L	30	25	69.6
May-17	007	Solids, total suspended	mg/L	1	45	69.6
May-17	021	Solids, total suspended	mg/L	30	25	38.5

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
May-17	023	Aluminum, total [as Al]	ug/L	30	2000	2980
May-17	023B	Solids, total suspended	mg/L	1	20	49
Jun-17	003	Temp. diff. between up/down stream deg. F	deg F	1	2	4.8
Jun-17	013	Solids, total suspended	mg/L	1	50	118
Jun-17	014	Solids, total suspended	mg/L	1	50	129
Jun-17	015	Solids, total suspended	mg/L	1	50	54
Jun-17	023B	Solids, total suspended	mg/L	1	20	26.2
Jul-17	007	Solids, total suspended	mg/L	30	25	31.8
Jul-17	023B	Solids, total suspended	mg/L	1	20	38
Aug-17	023	Solids, total suspended	mg/L	1	20	34
Aug-17	023	Aluminum, total [as Al]	mg/L	30	2	6.35
Aug-17	023	Aluminum, total [as Al]	mg/L	1	4	6.35
Aug-17	023	Solids, total suspended	mg/L	1	20	45
Aug-17	023B	Aluminum, total [as Al]	mg/L	1	4	6.78
Aug-17	023B	Aluminum, total [as Al]	mg/L	30	2	6.78

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Aug-17	023B	Solids, total suspended	mg/L	1	20	49
Sep-17	007	Solids, total suspended	mg/L	30	25	30.1
Sep-17	023	Aluminum, total [as Al]	mg/L	30	2	2.2
Sep-17	023	Solids, total suspended	mg/L	1	20	38
Sep-17	023	Toxicity [acute], Ceriodaphnia dubia	tox acute	Action Level	15	18.7
Sep-17	023	Toxicity [chronic], Ceriodaphnia dubia	tox chronic	Action Level	90	187
Sep-17	023	Toxicity [chronic], Pimephales promelas [Fathead Minnow]	tox chronic	Action Level	90	146
Sep-17	025	Solids, total suspended	mg/L	30	25	27.5
Sep-17	023B	Solids, total suspended	mg/L	1	20	90.7
Oct-17	007	pH	SU	1	9	9.5
Oct-17	023	Aluminum, total [as Al]	mg/L	30	2	3
Oct-17	023	Solids, total suspended	mg/L	1	20	42.7
Oct-17	023B	Aluminum, total [as Al]	mg/L	30	2	5.9

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Oct-17	023B	Aluminum, total [as Al]	mg/L	1	4	5.9
Oct-17	023B	Solids, total suspended	mg/L	1	20	172
Nov-17	007	pH	SU	1	9	10.5
Nov-17	023B	Solids, total suspended	mg/L	1	20	44
Dec-17	007	pH	SU	1	9.	=9.30
Dec-17	021	Oil & Grease	mg/L	1	15.	=113.00
Dec-17	023	Aluminum, total [as Al]	mg/L	1	4.	=6.50
Dec-17	023	Aluminum, total [as Al]	mg/L	30	2.	=6.50
Dec-17	023	Solids, total suspended	mg/L	1	20.	=53.00
Dec-17	023B	Aluminum, total [as Al]	mg/L	1	4.	=12.00
Dec-17	023B	Aluminum, total [as Al]	mg/L	30	2.	=12.00
Dec-17	023B	Solids, settleable	mL/L	1	.1	=0.90
Dec-17	023B	Solids, total suspended	mg/L	1	20.	=140.00
Jan-18	007	Solids, settleable	mL/L	1	.1	=0.40
Jan-18	007	Solids, total suspended	mg/L	1	45.	=129.00
Jan-18	007	Solids, total suspended	mg/L	30	25.	=129.00

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Jan-18	021	Solids, total suspended	mg/L	1	45.	118
Jan-18	021	Solids, total suspended	mg/L	30	25.	118
Jan-18	023	Aluminum, total [as Al]	mg/L	30	2.	=2.06
Jan-18	023	Solids, total suspended	mg/L	1	20.	=40.00
Jan-18	024	Solids, total suspended	mg/L	1	50.	=84.50
Jan-18	023A	Coliform, fecal general	CFU/100mL	30	200.	>16.70
Jan-18	023A	Coliform, fecal general	CFU/100mL	7	400.	>400.00
Jan-18	023A	Nitrogen, ammonia total [as N]	mg/L	1	20.	=22.50
Jan-18	023B	Solids, total suspended	mg/L	1	20.	=98.00
Feb-18	007	Solids, total dissolved	mg/L	1	1.	Not Reported
Feb-18	007	Solids, total dissolved	mg/L	30	1.	Not Reported
Feb-18	021	Oil & Grease	mg/L	1	15.	=21.70
Feb-18	021	Solids, total dissolved	mg/L	1	1.	Not Reported

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Feb-18	021	Solids, total dissolved	mg/L	30	1.	Not Reported
Feb-18	023	Aluminum, total [as Al]	mg/L	30	2.	=3.50
Feb-18	024	pH	SU	1	9.	=9.80
Feb-18	023A	BOD, 5-day, 20 deg. C	mg/L	1	45.	=46.00
Feb-18	023A	Nitrogen, ammonia total [as N]	mg/L	1	20.	=27.30
Feb-18	023B	Solids, settleable	mL/L	1	.1	=3.00
Mar-18	006	Solids, total suspended	mg/L	1	45.	=98.20
Mar-18	006	Solids, total suspended	mg/L	30	25.	=36.20
Mar-18	013	Solids, total suspended	mg/L	1	50.	=80.00
Mar-18	015	Solids, total suspended	mg/L	1	50.	=58.70
Mar-18	016	Solids, settleable	mL/L	1	.1	=0.30
Mar-18	016	Solids, total suspended	mg/L	1	50.	=756.00
Mar-18	023	Aluminum, total [as Al]	mg/L	1	4.	=5.50
Mar-18	023	Aluminum, total [as Al]	mg/L	30	2.	=3.90



<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Mar-18	023	Solids, total suspended	mg/L	1	20.	=39.20
Mar-18	024	pH	SU	1	9.	=10.80
Mar-18	023B	Aluminum, total [as Al]	mg/L	1	4.	=10.90
Mar-18	023B	Aluminum, total [as Al]	mg/L	30	2.	=5.20
Mar-18	023B	Solids, total suspended	mg/L	1	20.	=22.00
Apr-18	024	pH	SU	1	9.	=9.20
Apr-18	023A	BOD, 5-day, 20 deg. C	mg/L	1	45.	=62.00
Apr-18	023A	BOD, 5-day, 20 deg. C	mg/L	30	30.	=42.70
Apr-18	023A	Nitrogen, ammonia total [as N]	mg/L	1	20.	=27.50
Apr-18	023B	Solids, settleable	mL/L	1	.1	=4.00
Apr-18	023B	Solids, total suspended	mg/L	1	20.	=32.00
May-18	023A	BOD, 5-day, 20 deg. C	mg/L	30	30.	=35.00
May-18	023A	Nitrogen, ammonia total [as N]	mg/L	1	20.	=31.60
May-18	023B	Solids, total suspended	mg/L	1	20.	=21.60

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Jul-18	024	pH	SU	1	9.	=9.18
Jul-18	023B	Aluminum, total [as Al]	mg/L	30	2.	=2.40
Jul-18	023B	Solids, total suspended	mg/L	1	20.	=21.00
Aug-18	023	Aluminum, total [as Al]	mg/L	1	4.	=13.70
Aug-18	023	Aluminum, total [as Al]	mg/L	30	2.	=10.40
Aug-18	023	Solids, total suspended	mg/L	1	20.	=20.40
Aug-18	023A	BOD, 5-day, 20 deg. C	mg/L	1	45.	=56.00
Aug-18	023A	Coliform, fecal general	CFU/100mL	7	400.	>400.00
Aug-18	023B	Aluminum, total [as Al]	mg/L	1	4.	=11.70
Aug-18	023B	Aluminum, total [as Al]	mg/L	30	2.	=10.10
Aug-18	023B	Solids, total suspended	mg/L	1	20.	=43.30
Aug-18	023B	Sulfate, total [as SO <sub>4</sub> ]	mg/L	1		Not Reported
Aug-18	023B	Sulfate, total [as SO <sub>4</sub> ]	mg/L	30		Not Reported
Sep-18	015	Solids, total suspended	mg/L	1	50.	=114.00

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Sep-18	023B	Solids, settleable	mL/L	1	.1	0.3
Oct-18	007	Solids, total suspended	mg/L	1	45.	=55.20
Oct-18	023B	Solids, total suspended	mg/L	1	20.	=27.00
Nov-18	024	pH	SU	30	9.	=9.80
Dec-18	015	Solids, total suspended	mg/L	1	50.	=920.00
Dec-18	016	Solids, total suspended	mg/L	1	50.	=374.00
Dec-18	024	pH	SU	1	9.	=9.20
Dec-18	024	Solids, total suspended	mg/L	1	50.	=83.20
Jan-19	024	pH	SU	1	9.	=10.24
Feb-19	024	pH	SU	1	9.	12
Mar-19	007	Solids, total suspended	mg/L	1	50	56
Mar-19	013	Solids, total suspended	mg/L	1	50	108
Mar-19	014	Solids, total suspended	mg/L	1	50	367
Jun-19	023B	Mercury	ng/L	1	50	80.2
Aug-19	007	pH	SU	1	9.0	9.6
Mar-20	023B	Solids, total suspended	mg/L	1	20	23.5

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Days of Violation</b>	<b>Permitted Value</b>	<b>Reported Value</b>
Mar-20	023B	Solids, total suspended	mg/L	1	20	26
Apr-20	023B	Solids, total suspended	mg/L	1	20	25.3
Jun-20	021	Oil & Grease	mg/L	1	15	23.5
Aug-20	021	Solids, total suspended	mg/L	30	25	42.5