

EXHIBIT A

PROPOSED CONSENT JUDGMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

Case No. Civ. 20-3663

v.

VILLAGE OF ROCKVILLE CENTRE,
NEW YORK,

CONSENT JUDGMENT

Defendant.

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Judgment alleging that Defendant, the Village of Rockville Centre (“Village” or “Defendant”), violated Title I of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401 *et seq.*, and the federally-enforceable New York State Implementation Plan (“SIP”) requirements relating to the emission of Particulate Matter (“PM”) and Nitrogen Oxides (“NOx”);

WHEREAS, the Complaint against Defendant alleges that Defendant owns and operates a 33 megawatt (“MW”) municipal power plant in Nassau County, New York (referred to as “Facility”);

WHEREAS, the Complaint against Defendant alleges that Defendant, in operating its Facility, exceeded the permissible emission limits for PM and NOx;

WHEREAS, the Parties recognize, and the Court by entering this Consent Judgment finds, that this Consent Judgment has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Judgment is fair, reasonable, and in the public interest;

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

I. Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a), because the Rockville Centre Power Plant is located in this judicial district, and the violations alleged in the Complaint are alleged to

have occurred in this judicial district. For purposes of this Consent Judgment, or any action to enforce this Consent Judgment, the Village of Rockville Centre consents to the Court's jurisdiction over this Consent Judgment and any such action and over the Village of Rockville Centre, and consents to venue in this judicial district.

2. For purposes of this Consent Judgment, the Village of Rockville Centre agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b). Notice of commencement of this action has been given to the State of New York, specifically, the New York State Department of Environmental Conservation, as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b). The Parties desire to fully and finally resolve all past and present claims that were, or could now or hereafter be, asserted by the United States with respect to the matters covered herein without the necessity of litigation, and without admission, adjudication or determination of any issue of fact or law. The matters covered herein arise out of or in connection with the violations alleged in the Complaint.

II. Applicability

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

4. 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 Consent Judgment are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Judgment to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 2 and the United States Department of

Justice, in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Judgment.

5. Defendant shall provide a copy of this Consent Judgment to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Judgment, as well as to any contractor retained to perform work required under this Consent Judgment. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Judgment.

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

III. Definitions

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

- a. "CEMS" shall mean continuous emission monitoring system;
- b. "Clean Air Act" or "the Act" shall mean the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations;
- c. "Complaint" shall mean the complaint filed by the United States in this action;
- d. "Consent Judgment" or "Judgment" shall mean this Judgment;

- e. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, federal holiday, the period shall run until the close of business of the next business day;
- f. “Defendant” and “the Village” shall mean the Incorporated Village of Rockville Centre, New York;
- g. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- h. “Effective Date” shall have the definition provided in Section XIV;
- i. “Facility” shall mean Defendant’s Rockville Centre Power Plant facility located in Rockville Centre, New York, United States;
- j. “Inadequate Gas Supply” shall mean instances the gas is shut down, gas pressure or volume is limited by the local gas company, when the Village needs more than the 15 MW of gas-fired capacity, and/or when there is a failure of the gas compressor or related equipment;
- k. “NOx” shall mean airborne nitrogen oxides;
- l. “Paragraph” shall mean a portion of this Consent Judgment identified by an arabic numeral;
- m. “Parties” shall mean the United States and Defendant;
- n. “Section” shall mean a portion of this Consent Judgment identified by a roman numeral;
- o. “Shutdown” shall mean the cessation of operation of one or more engines in the Facility for any purpose;

- p. “Startup” shall mean setting in operation of one or more engines in the Facility for any purpose;
- q. “Title V Permit” shall mean the Title V Operating Permit issued to the Facility by the New York State Department of Environmental Conservation (“NYSDEC”) on April 30, 2014 and/or renewed Title V operating permit(s) issued to the Facility subsequently; and
- r. “United States” shall mean the United States of America, acting on behalf of the United States Environmental Protection Agency.

IV. Civil Penalty

8. Within 30 Days after the Effective Date, Defendant shall pay, together with interest accruing from the Effective Date, the sum of \$110,000 as a civil penalty. Interest on the civil penalty shall accrue at the rate specified in 28 U.S.C. § 1961 until the date of payment.

9. The Village shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the United States Department of Justice in accordance with written instructions to be provided by the United States Attorney’s Office to the Village, after the Effective Date. At the time of payment, the Village shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter to the United States in accordance with Section XIII (Notices); by email to cinwd_acctsreceivable@epa.gov; or by mail to:

EPA Cincinnati Finance Office
26 West Martin Luther King Drive
Cincinnati, Ohio 45268
Attention: Finance, Mail Code: NWD

The letter shall state that the payment is for the civil penalty owed pursuant to the Consent Judgment in United States v. Village of Rockville Centre, and shall reference the civil action number, the USAO number and DOJ case number 90-5-2-1-10981.

V. Compliance Requirements

10. With respect to the Facility, Defendant shall comply with all applicable requirements of the Act, all applicable provisions of the State Implementation Plan and Title V Operating Permits issued to the Facility.

11. Retire three existing engines. The Village shall permanently retire Engines 7 and 8, as well as retire the 2.1 MM-Btu/hour fuel oil-fired standby engine generator. The parties acknowledge that the Village completed this requirement as of December 31, 2018.

12. Dual-fuel operations of Engines 9, 10 and 11. The Village shall operate Engines 9, 10 and 11 in dual-fuel mode, except during Startup and Shutdown periods when oil-fired operation is permissible.

13. Reclassify Engine 13 as emergency-only engine. Engine 13 is currently classified as an “emergency stationary RICE” under 40 C.F.R. Part 63, Subpart ZZZZ, the RICE NESHAP. The Village shall submit a Title V permit renewal application that requests NYSDEC approval to reclassify Engine 13 as an “Emergency Power Generating Stationary Internal Combustion Engine” within the meaning of 6 NYCRR section 200.1(cq).

14. Retain emergency-only status of Engine 12. The Village shall retain the existing classification of Engine 12 as an “Emergency Power Generating Stationary Internal Combustion Engine” within the meaning of 6 NYCRR section 200.1(cq) and as an “emergency stationary RICE” under the RICE NESHAP. The Village shall not modify either of such classifications for Engine 12 without prior written approval of the EPA.

15. Increase Import Capacity. The Village shall complete upgrades to the Village’s electrical substations 3 and 4 to enable them to accommodate an increase, from 45 MW to 55 MW, in the power import capacity of the PSEG/LIPA transmission lines interconnected with

such substations. In addition, the Village shall transfer distribution circuits from substations 1 and 2 to substations 3 and 4, in order to leverage this additional import capacity. The Village shall complete such upgrades and circuit transfers by May 31, 2022.

16. Reclassification of Engines 9 and 10. The Village shall submit a Title V permit renewal application that requests NYSDEC approval to reclassify Engines 9 and 10 as “emergency stationary RICE” under 40 C.F.R. Part 63, Subpart ZZZZ, the RICE NESHAP.

17. Install NOx CEMS. The Village shall install, within 18 months of the Effective Date, a NOx CEMS on all engines that are not classified as an emergency-only engine as defined by 6 NYCRR 200.1(cq) or the RICE NESHAP.

18. Interim NOx emission limits for steady-state operations. As of the Effective Date, the Village shall operate its power plant as follows until the Title V permit renewal referenced in Paragraph 25 is approved by NYSDEC.

- a. The power plant shall achieve a facility-wide weighted average NOx emission limit of 3.3 grams NOx per Bhp-hr for engines operating on dual fuel, during non-emergency, steady-state operations, excluding periods of startup and shutdown, and
- b. The power plant shall achieve a facility-wide weighted average NOx emission limit of 6.2 grams NOx per Bhp-hr when the Village must operate one or more engines in oil-fired mode due to Inadequate Gas Supply, during non-emergency, steady-state operations, excluding periods of startup and shutdown.

19. Final NOx emission limit for steady-state operations. This Paragraph supersedes Paragraph 18 above, after the requirements of Paragraphs 15 and 17 have been implemented, or

no later than December 31, 2021, whichever is earlier. For engines operating in oil-fired, gas-fired or dual-fuel fired mode (excluding emergency engines operating in dual-fuel mode), the average NOx emissions rate shall not exceed 2.3 g/Bhp-hr during non-emergency, steady-state operations measured on a facility-wide weighted average basis, excluding periods of Startup and Shutdown. The NOx emission rate does not apply to emergency stationary RICE in emergency situations as defined by the RICE NESHAP.

20. Emission limits for Startup and Shutdown periods. The Village shall provide to the NYSDEC, as part of the Village's application to renew the power plant's Title V permit, data to establish emission limits for NOx, carbon monoxide ("CO") and ammonia applicable to Startup and Shutdown periods of Engine 14. The Startup and Shutdown periods will not exceed 60 minutes for Startup and 30 minutes for Shutdown, assuming normal operating circumstances.

21. Compliance with PM emission limit. The Village shall continue to ensure compliance with the requirement in its Title V Permit that each of Engines 9, 10, 11, and 14 complies with the 0.1 lb/MM-Btu particulate matter ("PM") emission limit while in oil-fired mode, during non-emergency, steady-state operations, excluding periods of Startup and Shutdown.

22. Order of engine operations in non-emergency situations. The Village shall abide by the following order of engine operations until the Village implements its requirements referenced in Paragraphs 15 and 16, above, to minimize NOx emissions while ensuring the ability to serve load during times when load exceeds the Village's current maximum import capacity:

- a. First, a combination of Engines 14, 9 and 10, all operated on dual fuel (unless there is an Inadequate Gas Supply to support such dual-fuel operations).
- b. If the foregoing combined capacity described in subpart (a) above is insufficient to serve non-emergency load, the plant will then also commence operation of Engine 11 on dual fuel.
- c. To the extent there is an Inadequate Gas Supply to support the dual-fuel operations described in subparts (a) and (b) above, the plant will operate a combination of Engines 9, 10 and 11 on dual fuel plus Engine 14 on oil. The plant will decide which of the foregoing engine combinations to operate in light of load conditions, gas availability, weather and other factors consistent with prudent utility practices.

23. Engine tune-ups. The Village shall perform tune-ups of each of the engine generators that are permitted for non-emergency use (currently Engines 9, 10, 11, and 14) in staggered fashion, but in no event less frequently than every 36 months or 5,000 hours of operation for each engine, whichever occurs first. The Village shall also perform tune-ups of the engines that are permitted for emergency use only (currently Engines 12 and 13, with Engines 7 and 8 having been permanently retired in December 2018) in staggered fashion, in no event less frequently than every 60 months or 5,000 hours of operation for each engine, whichever occurs first.

24. Training. The Village shall ensure that relevant Facility personnel, including engine operators, receive adequate training as to the procedures to be followed to ensure compliance with all requirements of the Title V Permit and the Consent Judgment, including but

not limited to requirements relating to PM, NOx, CO and emission limits and the order of engine operations.

25. Permitting Requirements. Within 180 Days after the Effective Date, the Village shall apply to NYSDEC to include any applicable requirements of this Consent Judgment (e.g., engine classification, interim and final emission limits and final startup and shutdown periods, order of operations of engines in non-emergency situations, and engine tune-ups) into a federally-enforceable Title V permit, in such a way that the requirements will survive termination of this Consent Judgment, and that identifies the authority for inclusion of the requirements in the Title V permit. In accordance with applicable laws and their implementing regulations, the Village shall also file any applications necessary to incorporate the requirements of this Consent Judgment into a Title V operating permit for the Facility.

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

VI. Reporting Requirements

27. The Village shall submit the following reports set forth in this Section to the United States and EPA from the Effective Date until the termination of the Consent Judgment. All submissions required by this Section shall indicate the case name and case docket number

and be sent to EPA, with a copy of the transmittal correspondence, without attachments, sent to the United States in accordance with Section XIII (Notices).

28. Within 60 days after the Effective Date of the Consent Judgment, the Village shall submit a report to EPA Region 2 documenting the Facility's compliance with the requirements of the Consent Judgment, including but not limited to interim emission limits, and providing an update on the Village's substation upgrade project. Thereafter, the reporting period for each report shall be 120 days for 2 reporting periods, and then, upon showing sustained compliance with the provisions of the Consent Judgment, the reporting period shall be every 180 days thereafter, until the Consent Judgment is terminated. Each report shall be submitted within 30 days following the end of each reporting period specified in the preceding sentence.

29. Notification of Non-Compliance. The reports described in Paragraph 28 above shall also include a description of any non-compliance with the requirements of Section V (Compliance Requirements). If the Village violates, or has reason to believe that it will violate, any requirement of this Consent Judgment, the Village shall notify the United States of such violation and its likely duration, in writing, within 10 Days of the Day the Village first becomes aware of the violation, with an explanation of the violation's likely cause(s) and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause(s) of a violation cannot be fully explained at the time the report is due, the Village shall so state in the report. The Village shall then investigate the cause(s) of the violation and shall submit an amendment to the report, including a full explanation of the cause(s) of the violation, or if the Village is unable to ascertain the cause(s) of the violation, it shall include a full explanation of its efforts to do so, within 30 Days of the Day the Village becomes aware of the cause(s) of the violation.

Nothing in this Paragraph relieves the Village of its obligation to provide the notice required by Section VIII (Force Majeure).

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

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

I certify under penalty of law that this document and all attachments were prepared under my direction or my 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 potential penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

32. This certification requirement does not apply to emergency situations or similar instances where compliance with this requirement would be impractical.

33. The reporting requirements of this Consent Judgment do not relieve the Village 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.

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

VII. Stipulated Penalties

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

36. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,250 per Day for each Day that the payment is late.

37. Compliance Milestones

- a. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in this subparagraph:

Penalty Per Violation Per Day	Period of Noncompliance
\$750	1st through 14th Day
\$1,500	15th through 30th Day
\$2,250	31st Day and beyond

- i. Retire three existing engines as required by Paragraph 11;
 - ii. Increase Import Capacity as required by Paragraph 15; and
 - iii. Install NOx CEMS as required by Paragraph 17.
- b. The following stipulated penalties shall accrue per violation per Day for each violation of the emission-related requirements identified in this subparagraph:

Penalty Per Violation Per Day	Period of Noncompliance
\$375	1 st through 14 th Day
\$750	15 th through 30 th Day
\$1,250	31 st Day and beyond

- i. Interim NOx emission limits for non-emergency, steady-state operations as required by Paragraph 18;
 - ii. Final NOx emission limit for non-emergency, steady-state operations as required by Paragraph 19;
 - iii. Emission limits for Startup and Shutdown periods as required by Paragraph 20; and
 - iv. Compliance with PM emission limit as required by Paragraph 21.
- c. The following stipulated penalties shall accrue per violation per Day for each violation of the operational-related requirements identified in this subparagraph.

Penalty Per Violation Per Day	Period of Noncompliance
\$250	1 st through 14 th Day
\$500	15 th through 30 th Day
\$750	31 st Day and beyond

- i. Dual-fuel operations of Engines 9, 10 and 11 as required by Paragraph 12;
 - ii. Order of engine operations in non-emergency situations as required by Paragraph 22; and
 - iii. Engine tune-ups as required by Paragraph 23.
- d. The following stipulated penalties shall accrue per violation per Day for each violation of the permitting and training-related requirements identified in this subparagraph.

Penalty Per Violation Per Day	Period of Noncompliance
\$250	1 st through 14 th Day
\$500	15 th through 30 th Day
\$750	31 st Day and beyond

- i. Reclassify Engine 13 as emergency-only as required by Paragraph 13;
- ii. Retain emergency-only status of Engine 12 as required by Paragraph 14;
- iii. Reclassify Engines 9 and 10 as emergency under the RICE NESHAP as required by Paragraph 16;
- iv. Training as required by Paragraph 24; and
- v. Permit application requirements as required by Paragraph 25.

38. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each failure to timely submit a report under this Consent Judgment, pursuant to Section VI (Reporting Requirements) as identified in this subparagraph:

Penalty Per Violation Per Day	Period of Noncompliance
\$150	1 st through 14 th Day
\$300	15 th through 30 th Day
\$500	31 st Day and beyond

39. 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.

40. The Village shall pay any stipulated penalty within 45 Days of receiving the United States' written demand therefor.

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

42. Stipulated penalties shall continue to accrue as provided in Paragraph 40, during any Dispute Resolution, but need not be paid until one of the following occurs:

- a. If the dispute is resolved by a decision of the United States that is not appealed to the Court or by agreement between the United States and the Village, the Village shall pay accrued penalties determined to be owing, together with Interest, to the United States within 45 Days of receipt of the United States' decision or within the time frame set forth in the agreement.
- b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the Village shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 45 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, the Village shall pay all accrued penalties determined to be owing, together with Interest, within 15 Days of receiving the final appellate court decision.

43. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Judgment.

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

45. The payment of penalties and Interest, if any, shall not alter in any way the Village's obligation to complete the performance of the requirements of this Consent Judgment.

46. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Judgment. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for the Village's violation of this Consent Judgment or applicable law, including but not limited to an action against the Village 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 Judgment shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Judgment.

VIII. Force Majeure

47. "Force majeure" for purposes of this Consent Judgment, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors that delays or prevents the performance of any obligation under this Consent Judgment despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such 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 Defendant's financial inability to perform any obligation under this Consent Judgment.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Judgment, whether or not caused by a force majeure event,

Defendant shall provide notice orally or by electronic or facsimile transmission to the EPA personnel identified in the Section XIII (Notices) within 72 hours of when Defendant first knew that the event might cause a delay. Within 7 days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

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

50. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision. The United States' position shall be binding unless the Village invokes Dispute Resolution under Section IX (Dispute Resolution).

51. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 30 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 48 and 49. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Judgment identified to EPA and the Court.

IX. Dispute Resolution

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

53. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Judgment shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute.

Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 15 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

54. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by delivery to the United States pursuant to Section XIII (Notices) 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.

55. The United States shall deliver its Statement of Position to Defendant within 60 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' 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.

56. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 60 Days of receipt of the United States' 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 Judgment.

57. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of the United States District Courts for the Eastern District of New York ("Local Rules"). Defendant may file a reply memorandum, to the extent permitted by the Court and the Local Rules.

58. Standard of Review

- a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Judgment, in any dispute brought under Paragraph 54 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules, the adequacy of the work required under this Consent Judgment, or other items requiring approval by EPA under this Consent Judgment, and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.
- b. Other Disputes. Except as otherwise provided in this Consent Judgment, in any other dispute brought under Paragraph 54, Defendant shall bear the burden of demonstrating that its position complies with this Consent Judgment.

59. 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 Judgment, 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 42. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. Information Collection & Retention

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

- a. monitor the progress of activities required under this Consent Judgment;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Judgment;
- c. obtain samples and, upon request, 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 this Consent Judgment.

61. Upon request, Defendant shall provide EPA or its authorized representative splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

62. Until 5 years after the termination of this Consent Judgment, 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 Judgment. 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, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

63. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. 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: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Judgment shall be withheld on grounds of privilege.

64. 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.

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

XI. Effect of Settlement/Reservation of Rights

66. This Consent Judgment resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

67. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Judgment. This Consent Judgment shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 66. The United States further reserves 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 Village, whether related to the alleged violations addressed in this Consent Judgment or otherwise.

68. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Village's alleged violations, the Village 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 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 66.

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

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

71. This Consent Judgment does not, and shall not be construed to, create rights in, or grant any cause of action to, any third party not a party to this Consent Judgment.

XII. Costs

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

XIII. Notices

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

To the United States:

James R. Cho
Assistant United States Attorney
United States Attorney's Office
Eastern District of New York
271-A Cadman Plaza East
Brooklyn, New York 11201
Phone: 718-254-6519
james.cho@usdoj.gov

And

Robert Buettner
Chief, Air Compliance Branch
United States Environmental Protection Agency, Region 2
290 Broadway, Floor 21
New York, New York 10007
Phone: 212-637-5031
Fax: 212-637-3998
buettner.robert@epa.gov

And

Liliana Villatora
Chief, Air Branch of Office of Regional Counsel
United States Environmental Protection Agency, Region 2
290 Broadway, Floor 16
New York, New York 10007
Phone: 212-637-3218
Fax: 212-637-3199
villatora.liliana@epa.gov

To Defendant:

Philip B. Andreas
Superintendent of Electric Utility
Rockville Centre Electric Department
110 Maple Avenue
P.O. Box 950
Rockville Centre, New York 11571-0950
Phone: 516-678-9305
pandreas@rvcny.us

And

Kathleen Murray
Village Administrator
Incorporated Village of Rockville Centre
1 College Place
P.O. Box 950
Rockville Centre, NY 11571-0950
Phone: 516-678-9212
kmurray@rvcny.us

And

A. Thomas Levin
Village Attorney
Incorporated Village of Rockville Centre
1 College Place
P.O. Box 950
Rockville Centre, New York 11571-0950

And

Eli D. Eilbott
Duncan, Weinberg, Genzer & Pembroke, P.C.
1667 K Street, N.W.
Suite 700
Washington, D.C. 20006
Phone: 202-467-6370
Fax: 202-467-6379
ede@dwgp.com

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

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

XIV. Effective Date

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

XV. Retention of Jurisdiction

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

XVI. Modification

78. The terms of this Consent Judgment, 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 Consent Judgment, it shall be effective only upon approval by the Court. Reasonable compliance schedule adjustment(s) requested by the Village for good cause shown and approved by EPA shall not constitute a material change to this Consent Judgment.

79. Any disputes concerning modification of this Consent Judgment shall be resolved pursuant to Section IX (Dispute Resolution) provided, however, that, instead of the burden of proof provided by Paragraph 58, the Party seeking the modification bears the burden of

demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. Termination

80. After Defendant has (a) satisfactorily complied with the compliance requirements of Section V, (b) satisfactorily complied with the reporting requirements of Sections V and VI for a period of two (2) years, (c) completed the payment of Section IV, and (d) paid any accrued stipulated penalties as required by this Consent Judgment, Defendant may serve upon the United States a Request for Termination. In that Request, the Defendant must state that it has satisfied all its requirements of the Consent Judgment, together with all necessary supporting documentation.

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

82. If the United States does not agree that the Consent Judgment may be terminated, Defendant may invoke Dispute Resolution under Section IX. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

XVIII. Public Participation

83. This Consent Judgment 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 Judgment disclose facts or considerations indicating that the Consent Judgment is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Judgment without further notice and agrees not to withdraw from or oppose entry of this Consent Judgment by the Court or to challenge any provision of the Consent Judgment, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Judgment.

XIX. Signatories/Service

84. The undersigned representative of Defendant and the Assistant Attorney General of the Environment and Natural Resources Division of the Department of Justice each certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and to execute and legally bind the Party he or she represents to this document.

85. This Consent Judgment may be signed in counterparts, and its validity shall not be challenged on that basis. The Village agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Judgment 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 service of a summons. The Village need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Judgment.

XX. Integration

86. This Consent Judgment constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Judgment and supersedes all prior agreements and understandings, whether oral or written,

concerning the settlement embodied herein. Other than submissions that are subsequently made and approved pursuant to this Consent Judgment, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Judgment or the settlement it represents, nor shall it be used in construing the terms of this Consent Judgment.

XXI. Final Judgment

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

IT IS SO ORDERED:

United States District Judge

Dated: _____

FOR THE UNITED STATES OF AMERICA:

August 13, 2020

JEFFREY BOSSERT CLARK
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

SETH D. DUCHARME
Acting United States Attorney
Eastern District of New York

By: 

JAMES R. CHO
MATTHEW SILVERMAN
Assistant U.S. Attorneys
U.S. Attorney's Office
Eastern District of New York
271-A Cadman Plaza East, 7th floor
Brooklyn, New York 11201

ERIC SCHAAF Digitally signed by ERIC SCHAAF
Date: 2020.08.03 17:45:51 -04'00'

ERIC SCHAAF
Regional Counsel, Region 2
United States Environmental Protection Agency

FOR THE VILLAGE OF ROCKVILLE CENTRE:

July 07, 2020



Francis X. Murray
Mayor, Incorporated Village of Rockville Centre