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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(DBZ7987)

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 UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 STATE OF NEW YORK and BARBARA :
 DEBUONO, M.D., as COMMISSIONER :
 of the NEW YORK STATE DEPARTMENT :
 OF HEALTH, :
 :
 Plaintiffs-Intervenors, :
 :
 - against - :
 CITY OF NEW YORK and NEW YORK :
 CITY DEPARTMENT OF ENVIRONMENTAL :
 PROTECTION, :
 :
 Defendants. :
 :
 -----x

Civil Action No.

 CV 97-2154
 (Gershon, J.)
 (Gold, M.J.)

THIRD SUPPLEMENT TO THE CONSENT DECREE

WHEREAS, on April 24, 1997, plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint alleging that the Defendants, the City of New York and the New York City Department of Environmental Protection (collectively the "City"), violated and continue to violate the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f, et seq., and the Surface Water Treatment Rule ("SWTR"), a National Primary Drinking Water

Regulation ("NPDWR"), promulgated under Section 1412 of the SDWA, 42 U.S.C. § 300g-1, and codified in 40 C.F.R. §§ 141.70-141.75, by failing to install filtration treatment for its Croton Water Supply System; and

WHEREAS, on May 29, 1997, the State of New York and Barbara DeBuono, M.D., Commissioner of the New York State Department of Health ("NYSDOH")(collectively the "State") filed a Complaint in Intervention alleging that the City is not in compliance with provisions of the State Sanitary Code ("SSC"), 10 NYCRR Part 5, by virtue of its failure to install filtration treatment for its Croton Water Supply System; and

WHEREAS, the City is the owner of and, through the Department of Environmental Protection, is the operator of a public water system serving approximately 9 million consumers; and

WHEREAS, the City obtains a portion of its drinking water from the Croton Water Supply System, a surface water source of drinking water; and

WHEREAS, the Parties intend by this Consent Decree to ensure that the City fully complies with the SDWA, the SWTR and the SSC with respect to the water supplied from its Croton Water Supply System to the City Distribution System; and

WHEREAS, plaintiff the United States, and plaintiffs-intervenors the State of New York and New York State Department of Health (collectively "the State"), and defendants, City of New York and New York City Department of Environmental Protection (collectively "the City") are parties to a Consent Decree which was entered in this action as a final judgment and order of this Court on November 24, 1998, which required the City to build a filtration plant to treat the Croton Water Supply System, and established a series of milestones that the City had to meet in building that facility; and

WHEREAS on May 7, 2002, a Supplement to the Consent Decree was entered which was superseded by a Second Supplement to the Consent Decree entered on January 27, 2005; and

WHEREAS, the City contends that at a current cost of \$3.2 billion, the Croton Water Treatment Plant ("WTP") is one of the largest capital construction projects in the City's history and the largest underground and stacked dissolved air flotation water treatment plant ever constructed in the United States; and

WHEREAS, the City contends that as a result of the magnitude and complexity of the WTP project, the complexity of the construction schedule, and unforeseen obstacles in completing the WTP, and despite taking extensive measures to mitigate delays

resulting from such factors, the City has completed over 85% of construction and has commenced start-up of both halves of the WTP (Plant A and Plant B), but has been unable to complete construction and commence operation of the Croton WTP within the timeframe set forth in the Second Supplement to the Consent Decree; and

WHEREAS, the City contends that such unforeseen obstacles included a federal investigation into the integrity of the apparent lowest responsible bidder for the general construction contract, which the City mitigated by awarding the contract to the next lowest bidder rather than reopening the bidding process, minimizing further project delays, but resulting in a delay of 6.4 months to register the contract and \$200 million in additional contract costs; and

WHEREAS, the City contends that additional delays were caused by the inability of the electrical contractor to meet the production rates required to achieve the schedule required under the Second Supplement, and which was further complicated by the design configuration of the WTP and other on-going construction work at the WTP, which delays the City mitigated by requiring an additional contractor to be brought in to manage the electrical contractor's work; and

WHEREAS, the City contends that additional delays were caused by the need to investigate and correct issues that were causing instability of the valve loops that control key process operations, which delays the City is mitigating by bringing in additional outside expertise to test for and pinpoint specific causes of the instability of the valve loops; and

WHEREAS, the City contends that it has made every effort to mitigate other schedule delays and risks, including hiring expert consultants to address design issues that arose during construction, requiring contractors to work extended schedules and work weeks, using alternative construction methods when available, bringing on additional subcontractors as necessary, and taking any other steps available to the City to ensure that the WTP be completed in the most timely manner possible; and

WHEREAS, in light of the above factors, the City has requested that certain of the milestones in the Second Supplement to the Consent Decree be revised and extended, as set forth herein; and

WHEREAS, the City represents that since 2008, it has not provided drinking water to consumers from the Croton Water Supply System; and

WHEREAS, the City has paid \$5,064,000 in penalties to date in connection with delays associated with certain milestones required under the Second Supplement, specifically, Milestone 23 (Issue notice to proceed for the first phase of construction of the WTP and the Mosholu Off-Site Facilities and commence construction) and Interim Milestones C (Issue Notice to Proceed for WTP Electrical Contract), D (Issue Notice to Proceed for WTP HVAC Contract), I (Place 40% of Structural Concrete for WTP) and J (Place 65% of Structural Concrete for WTP); and

WHEREAS, on March 15th and April 15, 2014, the City submitted to NYSDOH all documentation and certifications that Plants A and B, respectively, were completed and constructed in substantial conformance with the final design, as approved by NYSDOH; and

WHEREAS, on April 3rd and May 6, 2014, the City obtained NYSDOH Interim Completed Works Approval for Plants A and B, respectively, and the receipt of the Interim Completed Works Approval for Plants A and B provides the necessary regulatory approval to authorize the City to operate Plants A and B and distribute Treated Water from Plants A and B to the City's drinking water distribution system up to 290 mgd;

NOW, THEREFORE, the Court having considered the matter and being duly advised, it is hereby ORDERED, ADJUDGED and DECREED that this Third Supplement to the Consent Decree ("Third Supplement") shall supersede in its entirety the Consent Decree entered by this Court on November 24, 1998, the First Supplement to the Consent Decree and the Second Supplement to the Consent Decree.

I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over the Parties to this Third Supplement pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), and 28 U.S.C. §§ 1331, 1345 and 1355, and has supplemental jurisdiction over the State claims. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b) and 1395. The City hereby waives all objections to either jurisdiction or venue. The Complaint of the United States and the Complaint in Intervention of the State states claims against the City upon which relief may be granted.

II. OBJECTIVES

It is the express purpose of the Parties in entering into this Third Supplement to further the objectives of the SDWA, the SWTR and the SSC. The objective of all plans, studies, construction, and other obligations undertaken by the City

pursuant to the Paragraph VI is to cause the City to be in full compliance with the SDWA, including full compliance with the SWTR, the SSC and all provisions of applicable federal and state laws and regulations governing public water systems, with respect to water supplied by the City to the New York City drinking water distribution system from the Croton Water Supply System.

III. DEFINITIONS

Unless otherwise defined herein, terms used in this Third Supplement shall have the meanings provided in the SDWA, the NPDWRs and the SSC. The following definitions shall apply for the purpose of this Third Supplement:

1. "City Distribution System" or "City Drinking Water Distribution System" shall mean the in-City water tunnels, trunk mains and their appurtenances that carry treated drinking water from tunnel shafts and from the distribution facilities (Croton Water Filtration Plant, Hillview Reservoir and Silver Lake Tanks) to the service area connections of consumers in the City of New York.

2. "Completed Works Approval" shall mean the written authorization, issued by NYSDOH, permitting placement of the completed WTP into service, as set forth in 10 NYCRR § 5-1.22 (d).

3. "Croton Water Supply System" shall mean the Amawalk, Bog Brook, Cross River, Croton Falls, Diverting, East Branch, Middle Branch, Muscoot, New Croton, and Titicus Reservoirs; Kirk Lake, Lake Gleneida and Lake Gilead ("controlled lakes"); the tunnels, dams, streams, and aqueducts which are part of and connect the above-listed reservoirs and controlled lakes; the Jerome Park Reservoir; the New Croton Aqueduct; and any other facilities and structures used in delivering water by means of the New Croton Aqueduct to the New York City drinking water distribution system. Nothing in this paragraph or the Third Supplement, except as explicitly provided herein, requires the City to retain any reservoir, controlled lake, tunnel, dam, aqueduct, stream, or any other facility ("components") as a component of the Croton Water Supply System, provided that the removal of any such component is approved by NYSDOH as required by the SSC or any other applicable law.

4. The "Croton Watershed" shall mean the drainage basins of the reservoirs and controlled lakes of the Croton Water Supply System.

5. "Date of Entry" shall mean the date on which this Third Supplement is approved and signed by the United States District Court for the Eastern District of New York.

6. "Date of Lodging" shall mean the date this Third Supplement is filed for lodging with the Clerk of the Court for the United States District Court for the Eastern District of New York.

7. "Day" shall mean a calendar day beginning at midnight of that date and ending at midnight the following date (e.g., midnight December 31 to midnight January 1). In computing any period of time under this Third Supplement, if the last day would fall on a Saturday, Sunday or Federal, State or City holiday, the period shall continue until the next day other than a Saturday, Sunday or holiday.

8. "Documents" shall be defined in accordance with Local Civil Rule 26.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York.

9. "Mosholu Golf Course Site" shall mean the site in Van Cortlandt Park, Bronx County, New York, the metes and bounds of which are described in Sections 3 and 4 of Chapter 175 of the Laws of 2003 of the State of New York as well as the off-site facilities necessary for delivery of Treated Water from the WTP to the City's distribution system.

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

11. "SDWA" shall mean the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26.

12. "SWTR" shall mean the Surface Water Treatment Rule, 40 C.F.R. §§ 141.70-141.75.

13. "Treated Water" shall mean drinking water that meets the filtration and disinfection requirements that are applicable to a filtered water system, as well as other applicable provisions, of the SDWA, SWTR, NPDWRs and SSC.

14. "Water Treatment Plant" or "WTP" shall mean all filtration, disinfection and other facilities necessary for the City to be capable of providing filtered and disinfected water from its Croton Water Supply System in compliance with 40 C.F.R. §§ 141.72 (b), 141.73, and all applicable provisions of the SSC, in accordance with the design approved by the NYSDOH. The WTP shall consist of two halves known as "Plant A" and "Plant B". Each half has a design production capacity of 145 mgd and is designated as Plant A or Plant B on the contract drawings approved by NYSDOH. Each Plant shall be able to be operated independently of the other half and together they shall be capable of supplying the design flow of the WTP.

15. "Watershed Regulations" shall mean the Rules and Regulations for the Protection from Contamination, Degradation and

Pollution of the New York City Water Supply and its Sources, Title 15, Chapter 18 R.C.N.Y. § 18-11, et seq.; and Title 10 N.Y.C.R.R Part 128.

IV. APPLICABILITY AND BINDING EFFECT

A. The provisions of this Third Supplement shall apply to and be binding upon the Parties. To the extent provided by Fed. R. Civ. P. 65(d), the injunctive provisions of the Third Supplement are binding upon defendants' officers, agents, servants, and employees, and are binding upon those persons in active concert or participation with the defendants, their officers, agents, servants or employees who receive actual notice of this Third Supplement with respect to all matters related to the performance of this Third Supplement. The injunctive provisions of this Third Supplement shall also be binding upon the successors or assigns of the defendants, and the officers, agents, servants, and employees of the successors or assigns, and those persons in active concert or participation with the successors or assigns who receive actual notice of this Third Supplement.

B. Effective upon the Date of Lodging of this Third Supplement until its termination, the City shall provide a copy of this Third Supplement to all contractors, including consulting firms, performing work required under Paragraph VI. Effective

upon the Date of Lodging of this Third Supplement, the City shall include notice of this Third Supplement in any materials provided to prospective bidders for work required under Paragraph VI. and shall provide a copy of the Third Supplement to any bidder who requests a copy. The City shall provide the United States and the State with copies of all such contracts and bid documents. The provision of a copy of the Third Supplement to any contractor is not intended to and shall not, in and of itself, be construed as evidence that the contractor is an officer, agent, servant or employee of the City or a person in active concert or participation with the City, but may be considered by the Court in making a determination as to actual notice under Fed. R. Civ. P. 65(d). The facts and circumstances surrounding provision of a copy of the Third Supplement by the City to any contractor may be admissible, if relevant.

C. The City shall give written notice and a copy of this Third Supplement, and written notice of the existence and amount of any civil or stipulated penalty remaining unpaid pursuant to this Third Supplement, to any and all successors-in-interest no later than thirty (30) days prior to any transfer of ownership or operation of the aqueducts, reservoirs, or treatment facilities of the Croton Water Supply System. Simultaneously with such notice,

the City shall notify the United States and the State of such proposed succession-in-interest and that such notice and copy has been given by the City and shall provide a copy of the contract of transfer of ownership or operation to the United States and the State. The City shall condition the transfer of ownership or operation of the aqueducts, reservoirs or treatment facilities of the Croton Water Supply System, on the successor's(s')-in-interest agreement to fulfill the terms and conditions of this Third Supplement. In the event that the City transfers ownership or operation of only a portion of the Croton Water Supply System, the City shall condition the transfer of ownership or operation of that portion of the Croton Water Supply System on the successor's(s')-in-interest agreement to fulfill the terms and conditions of this Third Supplement applicable to that portion of the Croton Water Supply System.

D. Within 30 days of entry of this Third Supplement, the City shall designate a duly authorized representative whose responsibility shall be to oversee the City's program for completion of the Long Term Measures required by Paragraph VI. and the Interim Measures required by Paragraph VII., and to file such reports and certifications as are required under this Third Supplement. The City may designate different representatives for

the Long Term and Interim Measures. The designated representative(s), or his or her designee, shall attend quarterly progress meetings among the parties as provided for in Paragraph V. The designated representative(s) shall be responsible for timely filing of all reports and certifications required by Paragraphs VIII and IX. The City may designate a different representative at any time by notifying, in writing, the United States and the State.

V. MEETINGS AND REVIEWS

A. The parties shall meet and confer on a quarterly basis following the submission of the City's monthly reports and certifications pursuant to Paragraph VIII.A, unless the parties agree, in writing, to less frequent progress meetings.

B. The Parties recognize that, throughout the term of this Third Supplement, a Party may wish to discuss issues relating to the activities and the schedule of activities required by this Third Supplement, including the City's management plans for the Croton Water Supply System; appropriate treatment techniques, including emerging technologies related to filtration and disinfection; water quality issues; watershed control measures; and changes or proposed changes in drinking water standards or other federal or state mandates. The Parties agree that, at the

request of any Party, the other Parties shall discuss, at the quarterly progress meeting as provided for in Paragraph V.A, or at a separately arranged meeting, any issue or request relating to the activities and the schedule of activities required by this Third Supplement which is raised by a Party. The Parties shall send to any such meeting responsible and appropriate representatives to properly discuss and address the issues raised. The Party raising the issue or initiating a request shall provide appropriate technical justification. The other Parties shall, in good faith, review the technical information provided, respond to the issues raised, address the technical information relevant to such issues, and, if applicable, respond in writing to any written request made by the other Party.

VI. FILTRATION AND DISINFECTION LONG TERM MEASURES

The City shall implement the following Long Term Measures leading to completion of construction and operation of the WTP at the Mosholu Golf Course Site in accordance with 40 C.F.R. §§ 141.72(b), 141.73, 141.74, and 141.75 and all applicable SSC provisions, to provide for filtration and disinfection of all water supplied into the City drinking water distribution system from its Croton Water Supply System, in compliance with the following milestone events:

1. By May 17, 2015, commence operation of the WTP to provide Treated Water to either the high or low service area of the City water distribution system that is in compliance with the filtration and disinfection requirements that are applicable to a filtered water system, as well as other applicable provisions, set forth at 40 C.F.R. Part 141, Subparts H, L, and P, and all applicable SSC provisions, and continue to comply with all such provisions thereafter.

2. By May 17, 2016, submit to NYSDOH documentation and certifications to demonstrate to NYSDOH that the City has met all conditions of the Interim Completed Works Approval and has delivered 290 mgd of Treated Water to the City Drinking Water Distribution System. The documentation and certifications submitted by the City must include all documentation necessary for NYSDOH to review and approve the City's application for a Final Completed Works Approval. NYSDOH may include appropriate conditions consistent with its regulatory authority if needed. Final Completed Works Approval will be granted by NYSDOH upon satisfaction of the conditions of Interim Completed Works Approval. Condition(s) include, but are not limited to, a demonstration by the City that the WTP can produce 290 mgd of water that meets all applicable federal and state drinking water

quality standards and that the City can deliver Treated Water to both the high and low service areas of the City Distribution System.

3. By the earlier of (i) June 17, 2016, or (ii) within thirty (30) days after completion of the Milestone set forth in Paragraph VI.2, obtain Final Completed Works Approval from NYSDOH.

VII. INTERIM MEASURES

Until the City has complied with all the requirements set forth in Paragraph VI, the City shall implement the following Interim Measures:

A. Monitoring

1.a. Pathogen Monitoring. The City shall conduct the following sampling for *Giardia*, *Cryptosporidium*, and viruses in the following locations in the Croton Water Supply System and/or Croton Watershed:

<u>Location</u>	<u>Site Description</u>	<u>Frequency</u>
Croton Gatehouse	Source Water	Weekly
Muscot Reservoir	Croton Reservoir Inflow	Monthly/except Annually for Viruses
Croton Falls Release	Croton Falls Reservoir	Monthly when hydraulic pumping is utilized/except Annually for

		Viruses
Cross River Release	Cross River Reservoir	Monthly when hydraulic pumping is utilized/ except Annually for Viruses
Tributary to Haviland Hollow Brook	Undisturbed Watershed	Monthly/except Annually for Viruses
Tributary to Titicus River	Agricultural Watershed	Monthly/except Annually for Viruses
Downstream from Brewster Sewage Treatment Plant	Wastewater Treatment Plant	Monthly/except Bimonthly for Viruses

The City shall provide the results of analyses of the sampling to the United States and NYSDOH on a monthly basis.

1.b. Exception: When the Croton System is not delivering unfiltered drinking water to consumers, the testing requirements under Section VII.A.1 shall be modified as follows:

i. *Giardia*, *Cryptosporidium* and virus monitoring at the Croton Lake Gatehouse shall be conducted monthly, rather than weekly.

ii. Monthly monitoring of *Giardia* and *Cryptosporidium* and all virus monitoring of the Brewster WWTP, Muscoot Reservoir and tributaries shall be suspended.

2.a. Monitoring City-owned WWTPs. The City shall perform weekly sampling of the discharge from New York City-owned wastewater treatment plants (WWTPs) in the Croton Watershed. The sampling shall include collection and analysis for all parameters regulated by the SPDES permits for these WWTPs. The City shall provide the results of the sampling to the United States and NYSDOH on a quarterly basis.

2.b. Exception: When the Croton System is not delivering unfiltered drinking water to consumers, the testing requirements under Section VII.A.2.a shall be modified as follows: Monitoring of the City-owned WWTPs shall be performed monthly instead of weekly.

3. Inspection of City-owned WWTPs. The City shall conduct quarterly on-site inspections and shall report to the United States and NYSDOH on all City-owned SPDES permitted WWTPs in the Croton Watershed. The City shall provide a full report annually and quarterly summary reports to the United States and NYSDOH, which shall include progress reports on plant upgrades to comply with the requirements of the City's Watershed Regulations until those upgrades are completed.

4. Compliance of Non City-owned WWTPs.

a. Inspections. The City shall conduct quarterly on-site inspections and shall report to the United States and NYSDOH on all non City-owned SPDES-permitted WWTPs in the Croton Watershed. The City shall provide a full report annually and quarterly summary reports to the United States and NYSDOH, which shall include progress reports on plant upgrades to comply with the requirements of the City's Watershed Regulations until those upgrades are completed.

b.1. Monitoring. The City shall monitor all non City-owned WWTPs in the Croton-Watershed. The City shall conduct grab sample monitoring twice per month of the discharges from all non City-owned WWTPs. The monitoring shall include all parameters regulated by the SPDES permits for these WWTPs. The City shall provide the results of the sampling to the United States and NYSDOH on a quarterly basis.

b.2. Exception: When the Croton System is not delivering unfiltered drinking water to customers, the testing requirements under Section VII.A.4.b.1. shall be modified as follows:

Monitoring of WWTPs discharging outside of West Branch, Croton Falls and Cross River basins monthly, rather than twice monthly.

c. Compliance Assistance Conferences. The City shall conduct compliance assistance conferences with any non City-owned WWTP in the Croton Watershed which is experiencing significant or repeated exceedances of SPDES permit parameters or where the City believes that the WWTP's operations and/or maintenance are not adequate to ensure the WWTP's continued reliable compliance with its SPDES permit. The City shall conduct such conferences as needed (for example, at a WWTP, at a NYCDEP training site, or at any other appropriate location). As appropriate, the City shall refer the WWTP owner to the New York State Department of Environmental Conservation (NYSDEC) Technical Assistance Group or any other applicable assistance program operated by the NYSDEC. The City shall report to the United States and NYSDOH on all such conferences on a quarterly basis.

5. SWTR Monitoring. The City shall conduct monitoring in the Croton Water Supply System as specified in 40 C.F.R. Section 141.74(b)(1), (2), (3), (4), (5) and (6). On the tenth day of each month following entry of this Third Supplement during the term of this Third Supplement, the City shall report to the United States and NYSDOH the results of such monitoring. Such reporting shall be in accordance with 40 C.F.R. § 141.75(a) and SSC Section 5-1.30.

6.a. Coliform Monitoring. The City shall conduct the following sampling for coliforms: The City shall perform daily monitoring at the Croton Gatehouse keypoint location of raw water and of treated (chlorinated) water; sampling at limnological stations twice per month for the New Croton Reservoir, as ice conditions permit, and for at least 40 sites in streams throughout the Croton Watershed. In addition, the City shall perform monthly sampling at limnological stations at the other reservoirs and controlled lakes in the Croton Water Supply System from April through November. The City shall provide the results of the sampling to EPA and NYSDOH on a monthly basis.

b. Exception: When the Croton System is not delivering unfiltered drinking water to consumers, the testing requirements under Section VII.A.6.a. shall be modified as follows:

- i. Coliform Monitoring at the Croton Lake Gatehouse raw water keypoint location weekly, rather than daily.
- ii. Stream Coliform Monitoring monthly for the entire year, and monthly limnology surveys from April through November of each year.

B. The exceptions listed in Paragraphs VII.A.1.b, A.2.b, A.4.b.2 and A.6.b. shall not apply in the event that the City determines that it will deliver any unfiltered Croton water to any of its customers. In such event, the City shall immediately

notify the United States and the State that the City plans to reactivate the unfiltered Croton System, and, in any event, shall provide such notification no later than two weeks before reactivation of the unfiltered Croton System. On the date such notification is provided to the United States and the State, the City shall resume all monitoring required under Section VII.A.1.a, A.2.a, A.4.b.1 and A.6.a of the Third Supplement and shall not deliver unfiltered Croton water to its consumers until such time as the monitoring required under Section VII.A. of the Consent Decree is resumed. If the City fails to notify the United States and the State of its determination to deliver unfiltered Croton water to its consumers and/or fails to resume monitoring required under Section VII.A. of the Consent Decree, in accordance with the schedule set forth in this paragraph, prior to delivering any unfiltered Croton water to any of its consumers, the City shall be liable for stipulated penalties for violation of the requirements of Section VII.A. of the Consent Decree.

C. Public Notification

The City shall comply with public notification requirements of the SDWA and SSC Part 5 Sections 5-1.52 and 5-1.78 and on an annual basis provide public notice to the consumers of

the City Drinking Water System of the requirement to filter the Croton Drinking Water System.

VIII. REPORTING REQUIREMENTS

A. All reports required to be submitted pursuant to this Third Supplement shall be submitted to the United States, NYSDOH and the State, as specified, at the addresses set forth in Paragraph IX as follows:

1. On or before the tenth day of each calendar month following the calendar month in which this Third Supplement is entered, and continuing until completion of the Long Term Measures set forth in Paragraph VI, the City shall submit in writing to the United States and NYSDOH a report and certification in accordance with the requirements set forth in Paragraph VII.A.5.

2. On or before the fifteenth day of each calendar month following the calendar month in which this Third Supplement is entered, and continuing until termination of this Third Supplement pursuant to Paragraph XXI, the City shall submit in writing to the United States and the NYSDOH a report and certification detailing the status of all milestones and other requirements set forth in Paragraph VI.

3. On or before the fifteenth day of each calendar month following the calendar month in which this Third Supplement is entered, and

continuing until completion of the Long Term Measures set forth in Paragraph VI, the City shall submit in writing to the United States and the NYSDOH a report and certification detailing the status of all requirements set forth in Paragraphs VII.A.1 and A.6.

4. Quarterly, on or before the last day of the first month of the quarter, the City shall submit in writing to the United States, NYSDOH and the State a report and certification detailing the status of all milestones and other requirements set forth in Paragraphs VII.A.2, 3 and 4 and VII.B and C.

5. The reports and certifications required by Paragraph VIII shall be submitted by hand, by overnight mail, or by certified mail, return receipt requested. If the City's report and certification indicates noncompliance with the Decree, the report and certification shall be submitted to the United States, NYSDOH and the State by hand or overnight mail.

B. With respect to the monitoring and inspection requirements of Paragraph VII.A., the report and certification required under Paragraph VIII.A. shall identify all sampling locations or inspection locations, the date and time of sampling or inspection, the person or persons taking the samples or conducting the

inspection, and provide the results of the analysis of the samples collected or report on the findings from the inspection.

C. With respect to the requirements of Paragraphs VII.A.4.c, the report and certification required under Paragraph VIII.A. shall describe the progress of the compliance assistance conferences pursuant to Paragraph VII.A.4.c.

D. With respect to the requirements of Paragraph VI, the report and certification required under Paragraph VIII.A shall detail the status and progress of the Long Term Measures required pursuant to Paragraph VI including: 1) a description of the work performed in the previous month and a projection of the work to be performed during the following four-month period pursuant to this Consent Decree; and 2) a description of any noncompliance, or known or anticipated delay which may affect compliance with any milestone set forth in Paragraph VI, a description of the cause(s) of the delay or noncompliance, the duration of any delay, and a statement of any corrective action taken or to be taken to address such noncompliance and/or to minimize the delay. Notification pursuant to this paragraph shall not constitute notification pursuant to the provisions of Paragraph XI and shall not excuse the delay pursuant to the provisions of Paragraph XI.

E. In addition to the reports and certifications set forth in Paragraph VIII.A, the City shall provide the United States and the State with copies of additional documents and factual information in the City's possession, including those documents in the possession of its contractors or consultants, requested by the United States or the State to assist in their analysis of the City's progress in implementing the schedules and requirements set forth in Paragraph VI. The City retains the right to assert appropriate privileges with respect to documents requested by the United States or the State. If the City asserts such privilege(s), in accordance with Civil Rule 26.2 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, for each document, the City shall provide the United States and the State with the following unless divulgence of such information would cause disclosure of the allegedly privileged information: (1) the title of the document, (2) the date of the document, (3) the name and title of the author of the document, (4) the name and title of each addressee and recipient, (5) a description of the general subject matter of the document, and (6) the privilege asserted by the City. Where the document contains non-privileged information, the City shall transmit copies of the document containing the non-privileged

information, with the privileged portions of the document redacted. The United States and the State retain the right to challenge such assertions of privilege by application to the Court.

F. The City shall maintain legible copies of documentation relied upon in preparation of or which form the basis of the reports and certifications for a period of two years from the date of the report or certification, unless requested by the United States or the State to retain the document(s) for a longer period, not to exceed the length of this Third Supplement. The City may satisfy this obligation by providing copies of the document to the requesting Party. Nothing herein shall alter the obligations of the City to maintain documents in accordance with any law.

G. With respect to the reporting of monitoring results pursuant to Paragraphs VII.A. and Paragraph VIII.B., where the City does not report monitoring results for a sample at a particular location that was taken during the time period addressed by the report because the results of the sample are pending at the time the report is due, the City shall include a report of those results in the first periodic report due after receipt of the results, with a notation that the results were

previously pending and an identification of the location, date, and time the sample was taken.

IX. NOTICES, SUBMITTALS AND DEMANDS

Whenever, under the terms of this Decree, written notice is required to be given or a report or other document is required to be sent, or a demand for stipulated penalties is made, it shall be directed to the individuals at the addresses specified below. Any party may change the person designated or address for written notice by written notice to all the other designated recipients.

To the United States

Deborah B. Zwany
Senior Litigation Counsel
U.S. Attorney's Office
Eastern District of New York
Civil Division
271 Cadman Plaza East
Brooklyn, New York 11201
USAO File No: 9701387

Chief, Environmental Enforcement Section
Ref. # 90-5-1-1-4429
U.S. Department of Justice - EES
P.O. Box 7611, Ben Franklin Sta.
Washington, D.C. 20044

if by overnight mail:

Chief, Environmental Enforcement Section
Ref. # 90-5-1-1-4429
U.S. Department of Justice - EES
601 D St., N.W., Rm. 2121
Washington, D.C. 20005

U.S. Environmental Protection Agency
Region II
Water Compliance Branch
Attn: Douglas McKenna
Public Water Supply Enforcement Team
20th Floor
290 Broadway
New York, New York 10007

To the State of New York
Andrew Gershon
Assistant Attorney General
Environmental Protection Bureau
New York State Attorney General's Office
120 Broadway
New York, New York 10271

To NYSDOH
Pamela Young, Ph.D.
New York State Department of Health
Bureau of Water Supply Protection
New York City Watershed Section
Corning Tower, Room 1110
Empire State Plaza
Albany, NY 12237

To the City

For Long Term Measures:

Gerard Cox P.E.
Portfolio Manager, Water System Capital Program
Bureau of Environmental Design and Construction
New York City Department of Environmental Protection
5th Floor Low Rise
96-05 Horace Harding Expressway
Corona, New York 11368-5107

For Interim Measures:

Steven Schindler
Director, Water Quality
Bureau of Water Supply

New York City Department of Environmental Protection
71 Smith Ave.
Kingston, New York 12402

For all notices:

Environmental Law Division, Chief
New York City Law Department
100 Church Street
New York, New York 10007

John Rousakis
General Counsel
New York City Department of Environmental Protection
59-17 Junction Blvd., 19th Floor
Corona, New York 11368

B. All notices, reports or other submissions by the City shall contain the following certification:

I certify, under penalty of law, that the information contained in or accompanying this submission is true, accurate and complete based upon representations as to accuracy and completeness made to me either orally or through submission of documentation by appropriate personnel with responsibility for the matters contained herein.

C. The aforementioned reporting requirements do not relieve the City of its obligation to submit any other reports or information required by the SDWA, the NPDWRs, the SSC and any other applicable federal, state, or local laws and regulations governing public water supply systems.

X. STIPULATED PENALTIES

A. If the City fails to comply with any requirement in this Third Supplement specifically enumerated below, the City shall pay stipulated civil penalties as follows:

B. Filtration and Disinfection Long Term Measures

If the City fails to meet any requirement of the Long Term Measures set forth in Paragraph VI, the City shall pay a stipulated penalty as follows:

1. For failure to comply with Milestone VI.1: \$65,000,000.00.

2. For failure to comply with Milestone VI.2 for each day of such violation:

<u>Days of Non-Compliance or violation</u>	<u>Penalty per Violation Per Day</u>
1st to 30th day	\$10,000
31st to 60th day	\$15,000
61st to 90th day	\$20,000
After 90 days	\$37,500

3. For failure to comply with Milestone VI.3 for each day of such violation:

<u>Days of Non-Compliance or violation</u>	<u>Penalty per Violation Per Day</u>
31 st to 60 th day	\$2,500
61 st to 90 th day	\$5,000
91 st to 120 th day	\$7,500
After 120 days	\$10,000

4. For failure to submit progress reports on the progress of the Long Term Measures, as required by Paragraph VIII.D., \$250 per day. If the report due in the following month is submitted timely and includes all information and certifications required to be submitted in the missed report, the City will be deemed in compliance with the missed milestone as of the date of timely submission of the subsequent progress report.

C. Interim Measures

1. For failure to conduct sampling, monitoring, inspections or compliance assistance pursuant to Paragraph VII.A, \$1000 per violation per day.

2. For failure to submit reports on the interim measures required by Paragraph VII in accordance with Paragraph VIII, \$250 per day per violation. If the report due in the following month or quarter is submitted timely and includes all information and certifications required to be submitted in the missed report, the City will be deemed in compliance with the missed milestone as of the date of timely submission of the subsequent progress report.

D. On the Date of Entry of the Third Supplement, if the City has not met or did not timely meet one or more of the milestones set forth in Paragraph VI of the Third Supplement, the City shall

pay Stipulated Penalties in accordance with Paragraph X of the Third Supplement from the date of the milestone set forth in Paragraph VI through and including the date compliance is achieved.

E. Stipulated penalties shall be payable in the full amount set forth herein for failure to comply with a specific milestone whether the failure to comply is with respect to the entire milestone or a part thereof.

F. The stipulated penalties provided for in this Third Supplement shall automatically begin to accrue on the day that performance is due or the non-compliance occurs, and shall continue to accrue through the day that performance is completed or the non-compliance ceases. Nothing herein shall be construed to prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Third Supplement. Payment of stipulated penalties as set forth above is in addition to any other rights or remedies which may be available to the United States or the State by reason of the City's failure to comply with the requirements of this Third Supplement, and any Federal, state or local laws or regulations applicable to the Croton Water Supply System.

G. Stipulated penalties from the date of accrual shall be paid upon demand by the United States and/or the State on or before the thirtieth day following the demand and shall become due and payable monthly thereafter. In the event that payment is not made on the thirtieth day following demand or, for succeeding payments, payment is untimely, interest shall be paid from the date of accrual, at the rate provided for by 28 U.S.C. § 1961. Payments shall be made directly to the United States and the State. Half of all stipulated penalties, shall be paid to the United States and half shall be paid to the State, except that, if one Plaintiff has made a demand and the other Plaintiff has not made a demand within 15 days of receipt of the demand, then the entire amount of the stipulated penalties shall be paid to the Plaintiff demanding the stipulated penalties. Penalties due to the United States shall be made in accordance with the FEDWIRE Electronic Funds Transfer to the United States Department of Justice attached as Appendix A to the Third Supplement. The City will simultaneously submit to the United States and EPA a letter which sets forth the City's calculation of the penalty amount. The letter shall specify the name and court docket number of this case, reference USAO File No. 9701387 and DOJ No. 90-5-1-1-4429. Penalties due to the State shall be paid by tendering a check in

the appropriate sum, payable to "The State of New York" and sent by certified mail, return receipt requested, to the New York State Department of Law, Environmental Protection Bureau, 120 Broadway, 26th Floor, New York, New York 10271, with copies to NYSDOH and EPA. If the City fails to pay in accordance with the provisions of this paragraph any stipulated penalty owed under the terms of this Consent Decree, the United States and the State shall be entitled to recover all costs incurred in collecting such penalty, together with interest on such unpaid stipulated penalty at the statutory judgment interest rate in effect on the Date of Entry of this Consent Decree, as provided for in 28 U.S.C. § 1961, accruing from the time such penalty is owed.

H. The stipulated penalties herein shall be in addition to any other remedies or sanctions available to the United States or the State by reason of the City's failure to comply with the requirements of this Consent Decree, the SDWA, the SWTR, the SSC or any other applicable state or federal statutes and regulations. The United States and/or the State may seek equitable relief, in addition to stipulated penalties, to enforce the requirements of this Decree.

I. In the event the City transfers ownership of the aqueducts, reservoirs or treatment facilities of the Croton Water

Supply System to any transferee, any stipulated penalties due and owing under this Third Supplement shall be immediately due and payable.

XI. FORCE MAJEURE

A. For the purposes of this Consent Decree, "force majeure" shall mean any event that is beyond the control of the City that prevents the timely performance of any of the obligations of the City under this Consent Decree.

B. If any force majeure event occurs which causes or may cause a delay in the performance of any obligations of the City under this Consent Decree, the City shall notify the United States and the State in accordance with Paragraph IX., in writing as soon as reasonably practicable but no later than twenty (20) calendar days from the time the City believes that such an event may have occurred. The notice required under Paragraph XI.B shall describe in detail the force majeure event. Compliance with the notice requirements of Paragraph XI.B shall be a condition to any claim of force majeure for any event which is the subject of the notice requirement unless the United States and the State otherwise consent.

C. In addition to the notice required in Paragraph XI.B., if any force majeure event occurs which causes or may cause a

delay in the performance of any obligations of the City under this Consent Decree, the City shall notify the United States and the State in accordance with Paragraph IX, in writing within thirty calendar days after the time the City knew or should have known of the occurrence of the alleged force majeure event. The notice required by Paragraph XI.C shall describe in as much detail as is reasonably possible:

1. The cause or causes of the delay;
2. The anticipated duration of the delay;
3. Measures taken to minimize the delay, including the timetable for implementation of any such measures;
4. Proposed dates by which all subsequent scheduled milestones will be achieved; and
5. Actions that can be taken to minimize the impact of the force majeure event on the overall schedule. The City may not make any claim of force majeure for an event if it has materially failed to comply with the notice requirements of Paragraph XI.C. for such event.

D. The City shall take all reasonable actions to prevent or minimize any delay. The City shall make all reasonable efforts to recoup all lost time in completing the milestone delayed by the force majeure event, including the payment of additional expenses.

In the event any legal action is brought which might delay performance of any of the milestones in this Consent Decree, the City shall exercise due diligence in seeking removal to this Court and in defending such action, including appeals.

E. If the United States and the State agree that a delay or anticipated delay is attributable to a force majeure event, as defined herein, the time for performance of such obligation shall be extended for a period not to exceed the actual delay resulting from such event, and stipulated penalties shall not accrue or be due for such delay. In the event that revision of one or more of the schedule milestones is necessary, the City agrees to make all reasonable efforts to ensure that the milestone events set forth in Paragraph VI are not extended.

F. If the United States or the State do not agree with the City that a failure to achieve milestone dates was beyond the control of the City, within 30 days of receiving written notice from the United States or the State of such disagreement, the City may submit the matter to the Court for resolution. If the City submits the matter to the Court for resolution, the City shall have the burden of proving that the event is a force majeure as defined herein; that the City took all reasonable efforts to prevent or minimize the delay; and the duration of delay

attributable to the force majeure. If, upon submission to the Court, the Court determines that the delay was caused by a force majeure event, as defined herein, the delay shall be excused, but only for the period of the delay resulting from the force majeure event. If, upon submission to the Court, the Court determines that the delay was not caused by a force majeure event, as defined herein, the City shall pay the stipulated penalties attributable to such delay, plus accrued interest, in accordance with Paragraph X. Any such payments shall be made within fifteen (15) days of the Court's decision.

XII. DISPUTE RESOLUTION

A. Except for matters addressed in Paragraph XI, any dispute between the Parties which arises with respect to the implementation of the City's obligations under Paragraph VI, Paragraph VII or Paragraph VIII.A-E shall be resolved in accordance with the provisions of this Paragraph. The Parties shall attempt to resolve such a dispute, in the first instance, through informal negotiations between the Parties to the dispute. If the dispute is not resolved, any Party may apply to the Court. Any application to the Court shall set forth the nature of the dispute. Any other Party shall have thirty (30) days to file a response. Where such dispute challenges a federal or state agency

action or determination that, under applicable principles of administrative law, is to be upheld unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," that standard shall be applied in the dispute resolution proceeding before the Court in resolving such challenge. Where such dispute does not challenge a federal or state agency action or determination that, under applicable principles of administrative law, is to be upheld unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," the standard shall be that determined by the Court in accordance with applicable law. Nothing in this paragraph is intended to, or shall, modify the applicable standard of review to be used by the Court in the resolution of any dispute which arises with respect to this Third Supplement. This paragraph does not abrogate any principles of administrative law that govern judicial review, nor does it abrogate 42 U.S.C. § 300j-7.

B. The submission of a disputed matter to the Court under this paragraph shall not extend, postpone, or affect in any way any obligations of the City under this Third Supplement, unless otherwise agreed by the United States and the State or ordered by the Court. Stipulated penalties attributable to the disputed

matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. If the United States or the State prevails in the dispute, the City shall pay all stipulated penalties, plus accrued interest, in accordance with Paragraph X. Any such payments shall be made within fifteen days of the Court's decision.

XIII. NOT A LICENSE

This Third Supplement is not and shall not be interpreted to be a waiver of the requirements of the SDWA, the NPDWRs, or the SSC, nor shall it in any way relieve the City of its obligation to comply with the requirements of the SDWA, the NPDWRs or the SSC, or with any applicable federal or state law or regulation.

XIV. RIGHT OF ENTRY

Until termination of this Third Supplement, the United States, the State, and their authorized representatives, contractors, consultants, and attorneys, shall have the authority to enter any property or facility owned by the City relating to the Croton Water Supply System at all reasonable times for the purposes of monitoring the progress of activities required by this Consent Decree; verifying any data or information submitted to the United States, EPA, the State or NYSDOH in accordance with the terms of this Consent Decree; obtaining any samples or, on

request, splits of any samples taken by the City or its consultants; inspecting and evaluating any portion of the treatment facilities related to the Croton Water Supply System; inspecting and reviewing any records required to be kept by the City under the terms and conditions of this Consent Decree; and assessing the City's compliance with this Consent Decree. When on City property, the United States, the State, and their authorized representatives, contractors, consultants, and attorneys, shall comply with the City's health and safety requirements, provided however, that nothing herein shall be construed to limit the United States' and the State's right of access as provided in this Paragraph and pursuant to applicable laws and regulations. This provision is in addition to, and in no way limits or otherwise affects, any right of entry, inspection or obtaining information held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits.

XV. OBLIGATION TO COMPLY

A. The United States and the State do not, by their consent to the entry of this Third Supplement, warrant or aver in any manner that the City's selected WTP design pursuant to the Long Term Measures required by Paragraph VI will result in compliance with the provisions of the SDWA, the NPDWRs, or the SSC.

Notwithstanding any other provisions of this Consent Decree, and notwithstanding the United States' review, and the State's review and approval, of any plans formulated pursuant to this Third Supplement, the City shall remain solely responsible for achieving and maintaining complete compliance with the terms, provisions and requirements of this Third Supplement, the SDWA, the NPDWRs, and the SSC.

B. Notwithstanding the definition of the Croton Water Supply System set forth in Paragraph III.3, nothing in this Third Supplement shall preclude the City from transferring any water from the Cross River and/or Croton Falls Reservoirs into the Delaware Aqueduct under either drought or emergency conditions which necessitate the City to reduce the usage of water from the Catskill/Delaware System, provided that the City receives prior written approvals for such transfers from the NYSDOH and EPA, and provided that the transfers are in accordance with the conditions specified in the approvals.

C. Nothing in this Third Supplement requires the City to provide any form of treatment or other facilities, including filtration facilities, for water taken from the Croton Water Supply System by public water systems other than the New York City water system.

XVI. NON-WAIVER PROVISION

A. The United States and the State do not waive any and all rights or remedies available to them for any violation by the City of the SDWA, the NPDWRs, the SSC or other federal or state statutes or regulations, other than those violations specifically alleged in the Complaint and the Complaint in Intervention, respectively, in this action through the Date of Lodging of this Third Supplement. The United States and the State expressly reserve all remedies available to them for all violations of the SDWA, the NPDWRs, the SSC or other federal or state statutes or regulations not specifically alleged in the Complaint or Complaint in Intervention, respectively, and expressly reserve all remedies available to them to enforce the provisions of this Third Supplement; except that the State and the City agree that this Consent Decree supersedes in its entirety the 1992 Stipulation entered into between the City and NYSDOH regarding filtration of the City's Croton Water Supply System. Nothing herein shall be construed to limit the power of the United States or the State to undertake any action against any person in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment. The United States reserves, and this Consent Decree is without prejudice to, all

rights or remedies against the City with respect to criminal liability. This Consent Decree does not limit or affect the rights and remedies of the United States or the State as against any persons who are not Parties to this Consent Decree, and the United States and the State reserve all such rights and remedies.

B. Unless and until this Third Supplement is entered by the Court, the Consent Decree entered by the Court on November 24, 1998, as amended by the Second Supplement to the Consent Decree entered by the Court on January 27, 2005, shall remain in full force and effect.

XVII. COSTS OF SUIT

Each Party shall bear its own costs and attorney's fees in this action.

XVIII. PUBLIC COMMENT

The Parties agree and acknowledge that final approval by the United States and entry of this Third Supplement is subject to 28 C.F.R. § 50.7, the requirements of which are incorporated herein by reference.

XIX. MODIFICATIONS

The Parties agree that each Party shall give due consideration in good faith to any request by another Party for a modification of this Consent Decree based on, among other factors,

science, technology or public health. There shall be no modification of this Consent Decree without written consent of all the Parties to this Consent Decree, subject to the approval of the Court, or order of the Court, in accordance with applicable law. Nothing herein shall be construed to limit any Party's rights pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Unless modified, all of the provisions of this Consent Decree shall remain in full force and effect.

XX. RETENTION OF JURISDICTION

The Court shall retain jurisdiction over the subject matter of this action and the Parties to this Consent Decree to enforce, including by contempt order, the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary for the construction or execution of this Consent Decree.

XXI. TERMINATION OF DECREE

When the City has obtained the Final Completed Works Approval for the WTP, has completed all remedial measures specified in Paragraphs VI and VII of the Consent Decree, has paid all outstanding penalties specified in the Third Supplement to the Consent Decree, and has operated the WTP and maintained compliance with all requirements of this Consent Decree, the SWTR, and all

applicable provisions of the SDWA, NPDWRs and the SSC with respect to the Croton Water Supply System for a period of twelve (12) months (the "Twelve-Month Period") as described below following achievement of Milestone VI.1, then the United States and the State may move for termination of this Consent Decree.

During the Twelve-Month Period, the City will demonstrate that the WTP and appurtenances are capable of delivering Treated Water to both the high and low service areas of the City Drinking Water Distribution System, and that the WTP can and has delivered 290 mgd of Treated Water to the City Drinking Water Distribution System. Operation of the WTP during the Twelve-Month-Period may include periods when the WTP is maintained in a State of Readiness to produce Treated Water even if Treated Water is not continuously delivered to the City Drinking Water Distribution System, and may include periods when required or unanticipated maintenance temporarily reduces the WTP's capacity below 290 mgd of Treated Water. A "State of Readiness" shall mean maintaining (i) the WTP equipment, including maintaining the disinfection status of the WTP and the effectiveness of the filters and (ii) sufficient staffing so that the WTP could be activated and Treated Water could be delivered to consumers within 48 hours of the identification of a need to deliver such water. For avoidance of

doubt, however, in order to meet the continuous Twelve-Month Period necessary for this Termination Clause to be effective, the WTP (i) must at all times be capable of delivering no less than 145 mgd of Treated Water, (ii) must be capable of delivering 290 mgd of Treated Water for at least six months of the Twelve-Month-Period, (iii) must deliver Treated Water to the City Water Distribution System for no less than six cumulative months within the Twelve-Month-Period and (iv) must deliver 290 mgd of Treated Water to the City Drinking Water Distribution System. The requirement to deliver 290 mgd of Treated Water to the City Water Distribution System must be met at least one month before this Termination Provision may be invoked by any Party. For purposes of determining whether the requirement set forth in Paragraph (iii) above is met: (1) a month shall be defined as thirty days and (2) the City shall be credited for each day that Treated Water is delivered to the City Drinking Water Distribution System for a period of eight hours in a calendar day.

The Twelve-Month Period may include periods when required routine maintenance ("routine maintenance") temporarily reduces the WTP's capacity below the mgd requirements specified in this Paragraph. In such event, NYCDEP shall provide a written report of the scheduled routine maintenance to the United States and State in

accordance with the Reporting Requirements of this Third Supplement at least one business day prior to conducting such maintenance activity. The Twelve-Month Period may also include periods when unanticipated maintenance or repairs ("unanticipated maintenance") temporarily reduces the WTP's capacity below the mgd requirements specified in this Paragraph. In such event, NYCDEP shall provide a written report to the United States and State in accordance with the Reporting Requirements of this Third Supplement within three business days of commencement of the unanticipated maintenance. If NYCDEP provides such reports timely in accordance with this Paragraph and the routine or unanticipated maintenance activity reduces capacity below either 145 mgd or 290 mgd, as applicable, for less than six hours in any calendar day, the Twelve-Month Period shall not be extended. If, however, NYCDEP fails to provide such reports timely in accordance with this Paragraph or the maintenance activity reduces capacity below either 145 mgd or 290 mgd, as applicable, for more than six hours in any calendar day, the Twelve-Month Period shall be extended by one calendar day for each calendar day in which the capacity falls below the required capacity for six hours or more or for which a report was not filed.

If the City believes that a violation of the SWTR, SDWA, NPDWRS, and/or SSC is not related to operation of the WTP or the distribution of Croton water into the City Distribution System, the City shall provide a written report to the United States and the State within ten business days of the violation identifying the violation and explaining in full the basis of its belief. In the event the United States and the State determine that such violation is not related to operation of the WTP or the distribution of Croton water into the City Distribution System, such violation shall not preclude the United States and the State from moving to terminate the Consent Decree and such violation shall not extend the Twelve-Month Period. In the event of a violation of the SWTR, the SDWA, NPDWRs and/or the SSC that is related to the operation of the WTP or the distribution of Croton water into the City Distribution System during the Twelve-Month Period, the City shall provide a written report within ten business days of the violation identifying the violation and explaining the circumstances of the violation. If such a report is received, the United States and the State may, jointly and in their discretion, determine that the Twelve Month Period will be extended by a time period commensurate with the violation (for

example, one month for monthly requirements and three months for quarterly requirements), rather than commencing anew.

In the event that the United States and the State have not moved to terminate the Consent Decree after the Twelve-Month Period, the City may make a written request to the United States and the State to so move. Any such request filed by the City shall be accompanied by a certification, consistent with Paragraph IX.B. of the Consent Decree, that the City has obtained the Final Completed Works Approval for the WTP, has completed all remedial measures specified in Paragraphs VI and VII of the Consent Decree, has paid all outstanding penalties specified in the Third Supplement to the Consent Decree and has operated the WTP and maintained compliance with all requirements of the Third Supplement, the SWTR, and all applicable provisions of the SDWA, NPDWRs and the SSC with respect to the Croton Water Supply System for the Twelve-Month-Period, as described above, including having delivered 290 mgd of Treated Water that meets the requirements of the SDWA, SWTR, NPDWRs and SSC to the City Drinking Water Distribution System. If the United States and the State have not filed a motion to terminate the Third Supplement within thirty (30) days after receipt of the City's written request, the City may file a motion with the Court to terminate the Third

Supplement. The United States and the State reserve the right to object to any motion to terminate by the City.

XXII. ENTIRE AGREEMENT

This Third Supplement contains the entire agreement between or among the Parties with respect to the subject matter hereof. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Third Supplement.

XXIII. SIGNATORIES

The Assistant Attorney General of the Environment and Natural Resources Division of the Department of Justice, or his designee, and the United States Attorney for the Eastern District of New York, or her designee, and the undersigned representatives for the State and the City each certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the party he or she represents to this document.

The Court finds that this Third Supplement to the Consent Decree is a reasonable and fair settlement and adequately protects the public interest in accordance with the Safe Drinking Water

Act. Entered as a final judgment and order of this Court this
day of _____, 2014.

HONORABLE NINA GERSHON
United States District Judge

THE UNITED STATES OF AMERICA:



SAM HIRSCH
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

LORETTA E. LYNCH
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

By:

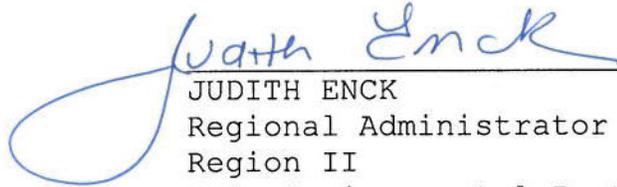


DEBORAH B. ZWANY (DEZ 7987)
Assistant U.S. Attorney
(718) 254-6010

ELIZABETH YU
Attorney
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044



CYNTHIA GILES
Assistant Administrator
U.S. Environmental Protection
Agency
Office of Enforcement and
Compliance Assurance
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460



JUDITH ENCK
Regional Administrator
Region II
U.S. Environmental Protection
Agency
290 Broadway
New York, New York 10007-1866

Third Supplement to the Consent Decree, *United States v. City of New York and New York City Department of Environmental Protection*, Civil Action No. 97-2154.

FOR THE STATE OF NEW YORK:



ANDREW GERSHON (AG6141)
Assistant Attorney General
New York State Attorney General's
Office
Environmental Protection Bureau
120 Broadway
New York, New York 10271



NATHAN GRABER, M.D., M.P.H.
Director
New York State Department of Health
Center for Environmental Health
Corning Tower
Empire State Plaza
Albany, NY 12237

FOR THE CITY OF NEW YORK:



EMILY LLOYD
Commissioner
New York City Department of
Environmental Protection

ZACHARY W. CARTER
Corporation Counsel
of the City of New York
100 Church Street
New York, New York 10007

By:



CARRIE NOTEBOOM (CN7173)
Senior Attorney
Environmental Law Division
(212) 356-2319

APPENDIX A

**FEDWIRE Electronic Funds Transfer
to the
United States Department of Justice**

TO: [Person sending EFT]

To transfer funds electronically to the Federal Reserve/United States Treasury Department in New York City for credit to the United States Department of Justice, the following information must be provided to the bank from which the funds are to be transferred. This information will enable the sending bank to complete those fields associated with the beneficiary bank of a "*FedWire Structured Third Party Format*" electronic funds transfer.

ITEM	DESCRIPTION	CODING INFORMATION FOR FEDWIRE FORMAT
2	Receiving Bank ABA Code	021030004
3	Message Type Code	1000
7	Wire Amount	[Amount to be Wired]
9 10 11	Receiving Beneficiary Bank, Name & Account No.	TREAS NYC/CTR/BNF=DEPT OF JUSTICE/AC-15030001
12	Required Beneficiary Information: *Collection Office Identifier *Debtor Name *Collection Office Claim No.	USAO/[District Code] [Debtor name] [USAO Number]

ATTENTION FINANCIAL LITIGATION PERSONNEL:

Each of the above blank spaces "**MUST**" be completed before providing this form to the debtor/debtor's attorney. Once completed, the debtor/debtor's attorney must provide this form to the bank from which the funds are to be transferred to ensure that the electronic transfer of funds is accomplished and properly credited to the United States Department of Justice/Debt Accounting Operations Group.

AUTHORITY:

The above information requirements are in accordance with the United States Treasury Department "Treasury Requirements Manual/Part 6 - Chapter 8000"; Appendix E of the "Federal Reserve Bank Funds Transfer Systems Manual"; and, 31 CFR Part 206 (Federal Register - Vol. 59, No. 20).

Questions regarding this FedWire EFT should be directed to the responsible Collection Office:

POINT OF CONTACT: <Name>

TELEPHONE NUMBER: <Business Phone Number>