

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:20-_____

COUNTY OF NASSAU,

Defendant.

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CONSENT JUDGMENT

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BACKGROUND

- A. Plaintiff United States of America on behalf of the United States Environmental Protection Agency (“EPA”) previously filed an administrative Complaint, Compliance Order and Notice of Opportunity for Hearing on or about March 31, 2011 (the March 31, 2011 Complaint”) against the County of Nassau (“Nassau County”) alleging violations at underground storage tanks (“USTs”) and UST systems owned and/or operated at approximately 33 facilities in Nassau County. The alleged violations were of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991, *et seq.* (hereinafter referred to as “RCRA” or “the Act”).
- B. On or about September 29, 2012, an administrative order, which was issued in the form of a Consent Agreement and Final Order (“CAFO”), was issued resolving the claims alleged by EPA in the March 31, 2011 Complaint.
- C. Under the CAFO, Nassau County was required, in part, to: pay a civil penalty of \$400,000; take various steps to comply with the UST rules and requirements; and to submit a written certification for compliance with these requirements by March 31, 2014.
- D. The CA/FO subjects Nassau County to stipulated penalties for failure to perform the injunctive work as required under the CAFO.
- E. The United States of America has filed a Complaint in this action concurrently with this Consent Judgment, alleging that Nassau County violated the federal underground storage tank regulations promulgated under Sections 9003(a) and 9003(c) of the Solid Waste Disposal Act, as amended by various laws including the RCRA.
- F. The Complaint alleges that at all relevant times Nassau County “owned” and/or “operated” the USTs at the locations listed in Appendix A, attached hereto.
- G. The Complaint seeks injunctive relief and civil and stipulated penalties for the failure of Nassau County to comply with RCRA requirements and with an EPA administrative order that, *inter alia*, required that Nassau County achieve compliance with the RCRA requirements regarding USTs owned or operated by Nassau County at the locations listed in Appendix A, attached hereto.
- H. Specifically, the Complaint seeks: (1) an order requiring that Nassau County comply with RCRA requirements regarding USTs and with the administrative order, which was issued in the form of a CAFO; (2) civil penalties pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e; and (3) stipulated penalties pursuant to the CAFO for Nassau County’s failures to comply with the requirements of the CAFO.
- I. Nassau County neither admits nor denies any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

- J. Nassau County represents that due to the COVID-19 public health emergency, it is experiencing significant budget shortfalls that are expected to endure at least until December 15, 2021.
- K. 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 among the Parties and that this Consent Judgment is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

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 9006(a)(1) of the Act, 42 U.S.C. § 6991e(a)(1), and over the Parties. Venue lies in this District pursuant to Section 9006(a) of the Act, 42 U.S.C. § 6991e(a), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a), because Nassau County 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, Nassau County consents to the Court's jurisdiction over the Complaint and this Consent Judgment and over any such action to enforce this Consent Judgment and over Nassau County and consents to venue in this judicial district.
- 2. For purposes of this Consent Judgment, Nassau County agrees that the Complaint states claims upon which relief may be granted pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

II. APPLICABILITY

- 3. The obligations of this Consent Judgment apply to and are binding upon the United States, and upon Nassau County and any successors, assigns, or other entities or persons otherwise bound by law.
- 4. No transfer of ownership or operation of any of the Facilities whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Nassau County of its obligation to ensure that the terms of the Judgment are implemented. At least 30 days prior to such transfer, Nassau County 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, the United States Attorney for the Eastern District of New York, and the United States Department of Justice, in accordance with Section XIII (Notices). Any attempt to

transfer ownership or operation of any of the Facilities without complying with this Paragraph constitutes a violation of this Judgment.

5. Nassau County 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. Nassau County shall condition any new contract upon performance of the work in conformity with the terms of this Consent Judgment.
6. In any action to enforce this Consent Judgment, Nassau County shall not raise as a defense the failure by any of its officers, 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 the regulations found at 40 C.F.R. 280.12, unless otherwise provided in this Consent Judgment. Whenever the terms set forth below are used in this Consent Judgment, the following definitions shall apply:

“Act” or “the Act” shall mean “RCRA” as defined in this section.

“Affected UST” shall mean each UST or UST system owned and/or operated by Nassau County and located in Nassau County, currently and/or during the term of the Consent Judgment, including USTs located at the facilities listed in Appendix A. “Affected UST” does not include any UST that has been permanently closed under the requirements of Paragraph 15 and which is listed in Appendix C. “Affected UST” also does not include any UST under repair or construction at any Facility listed in Appendix B until 60 days after the completion date of UST repair and/or construction that is specified therein for each of the Appendix B Facilities.

“Complaint” shall mean the complaint filed by the United States in this action;

“Consent Judgment” shall mean this Consent Judgment and all appendices attached hereto (listed in Section XXII);

“CMS” shall mean a Central Monitoring System that collects all data generated by fully automated electronic release detection equipment at each Facility, and electronically transmits such data to at least one central location;

“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, or federal holiday, the period shall run until the close of business of the next business day;

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

“Effective Date” shall have the definition provided in Section XIV;

“Facility” means a facility listed in Appendices A, B and C.

“Interest” shall mean the interest rate specified in 28 U.S.C. § 1961;

“Nassau County” shall mean the Defendant, Nassau County or the County of Nassau, and all departments or agencies of the County that own and/or operate USTs and/or UST systems subject to federal regulations promulgated pursuant to the Act and set forth in 40 C.F.R. Part 280.

“New UST” shall mean each UST or UST system that Nassau County installs, brings into use, or discovers after August 1, 2019 that is located in Nassau County, including at any Facility listed in Appendices A or B.

“Paragraph” shall mean a portion of this Consent Judgment identified by an arabic numeral;

“Parties” shall mean the United States and Nassau County;

“RCRA” or “the Act” shall mean the Solid Waste Disposal Act as amended by the various statutes (including the Resource Conservation and Recovery Act as amended), 42 U.S.C. § 6991 *et seq.*

“Section” shall mean a portion of this Consent Judgment identified by a roman numeral;

“United States” shall mean the United States of America, acting on behalf of the Environmental Protection Agency.

“Vendor” shall mean any contractor or subcontractor whose duties include performing Work required under this Consent Judgment.

“Work” shall mean all of the obligations set forth in Section V (Compliance and Reporting Requirements).

IV. CIVIL PENALTY

8. Nassau County shall pay the sum of \$427,500.00 as a civil penalty (“civil penalty”) by making three equal payments as follows: (1) within 120 days after the Effective Date Nassau County shall pay one third of the civil penalty (\$142,500.00); (2) within 300 days of the Effective Date, Nassau County shall pay another one third of the civil penalty (\$142,500.00); and (3) by no later than December 15, 2021, Nassau County shall pay the last one third of the civil penalty (\$142,500.00). The first payment shall include an additional amount for interest accrued on the unpaid balance accruing from the date on

which the Consent Judgment is lodged with the Court to the date of payment, at the rate specified in 28 U.S.C. § 1961 as of the Effective Date. The second and last payment shall each include an additional amount for interest accrued on the unpaid balance accruing from the date of the previous payment to the date of payment, at the rate specified in 28 U.S.C. § 1961 as of the Effective Date.

9. Nassau County shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the United States Department of Justice account, in accordance with written instructions to be provided by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office to Nassau County, following entry of the Consent Judgment. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Nassau County shall use to identify all payments required to be made in accordance with this Consent Judgment. The FLU will provide the payment instructions to Nassau County in accordance with Section XIII (Notices).

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

10. At the time of payment, Nassau County 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; and 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. County of Nassau*, and shall reference the civil action number, the CDCS number, and DOJ case No. 90-7-1-11455.

V. COMPLIANCE REQUIREMENTS

11. **Installation, Upgrade and Other Requirements.** Nassau County shall ensure that each Affected UST is in compliance with the requirements of this Paragraph on or before 60 days after the Effective Date. Nassau County shall ensure that each UST system at the Facilities listed in Appendix B is in compliance with the requirements of this Paragraph within 60 days after the completion date for UST system repair and/or construction specified for each Facility in Appendix B. Nassau County shall ensure that each New UST is in compliance with the requirements of this Paragraph by the date 60 days after Nassau County installs, brings into use, or discovers the UST system. Nassau County also shall, within 90 days, notify the United States of the existence of the New UST and Nassau County’s compliance with the Act, 40 C.F.R. Part 280, and this Paragraph regarding such New UST.

- a. Each UST system must be in compliance with the applicable requirements under 40 C.F.R. Part 280.
 - b. Each UST system must have a fully automated release detection system that meets the performance standards under 40 C.F.R. §§ 280.41(a) – (b), 280.43, and 280.44, and which includes a console, tank probe, sump probe, interstitial sensors, overflow alarm or switch, and fully automated release detection equipment. Nassau County shall install a centralized monitoring system (CMS), including communications components (e.g., modems, wiring) necessary to allow the remote and centralized monitoring of the automated release detection systems installed.
 - c. Each UST system shall have installed an under-dispenser containment system, in accordance with 40 C.F.R. § 280.20(f). Nassau County shall install electronic sensors and conduct electronic release detection monitoring of the under-dispenser containment system.
 - d. *Upgrade/Closure Requirements.* Each UST system shall be upgraded to meet the performance standards of 40 C.F.R. § 280.21.
 - e. For each UST system with overflow prevention equipment that was installed or replaced after October 13, 2015, the ball float overflow devices may not be used for overflow prevention in accordance with 40 C.F.R. § 280.20(c)(3). Instead, the overflow prevention equipment must have either auto-shutoff valves or high-level alarms in accordance with 280.20(c)(1)(ii)(A), (B), or (C).
12. **Operation and Maintenance (O&M) Requirements.** Nassau County shall commence to operate and maintain each Affected UST in accordance with the requirements of this Paragraph within 60 days after the Effective Date and continue to operate and maintain the UST system in accordance with this Paragraph. Nassau County shall operate and maintain each UST system at the Facilities listed in Appendix B in accordance with the requirements of this Paragraph starting 60 days after the completion date of UST repair and/or construction specified for each Facility listed in Appendix B. Nassau County shall commence to operate and maintain each New UST in accordance with the requirements of this Paragraph within 30 days after Nassau County installs, brings into use, or discovers the UST and shall continue to operate and maintain the New UST in accordance with the requirements of this Paragraph.
- a. Nassau County shall operate and maintain the automated release detection system and equipment on each UST system in accordance with 40 C.F.R. § 280.40(a)(3) and shall operate and maintain the CMS components of the automated release detection system, as described further in Paragraph 13 below.
 - b. Nassau County shall operate and maintain the under-dispenser containment system, in accordance with 40 C.F.R. § 280.20(f), and shall conduct electronic release detection monitoring for the under-dispenser containment.

- c. Nassau County shall conduct inspection and testing of the spill prevention equipment and containment sumps used for interstitial monitoring of piping, and the overfill prevention equipment, in accordance with 40 C.F.R. § 280.35(a), (b) & (c).
- d. Nassau County shall perform annual tightness tests or monthly monitoring of pressurized piping at each UST system in accordance with 40 C.F.R. § 280.41(b)(1)(i)(B).
- e. *Release Investigation and Confirmation.* Nassau County shall conduct release investigation and confirmation of suspected releases or unusual operating conditions in accordance with 40 C.F.R. § 280.52.
- f. *Periodic Operation and Maintenance Walkthrough Inspections.* Nassau County shall conduct monthly and annual operation and maintenance walkthrough inspections at each Facility in accordance with 40 C.F.R. § 280.36(a) & (b). For the monthly inspections, Nassau County shall check spill prevention equipment and release detection equipment. The annual inspections shall be conducted either between April 1 and June 30 or between September 1 and November 30 of each calendar year. For the annual inspections, Nassau County shall check on containment sumps, hand-held release detection equipment, including tank gauge sticks or groundwater bailers, for operability and serviceability.
- g. Nassau County shall operate and maintain the spill and overfill controls at each UST in accordance with 40 C.F.R. § 280.30.
- h. Nassau County shall implement repairs at each UST system in accordance with 40 C.F.R. § 280.33.
- i. Nassau County shall operate and maintain corrosion protection at each UST system in accordance with 40 C.F.R. §§ 280.31(a)-(d) and 280.70(a).
- j. Nassau County shall cap and secure UST systems that are temporarily closed for three months or longer in accordance with 40 C.F.R. § 280.70(b)(2).
- k. Nassau County shall perform release detection monitoring for UST systems that are temporarily closed in accordance with 40 C.F.R. § 280.70(a).
- l. Nassau County shall comply with the requirements of 40 C.F.R. § 280.70(b) for an UST system that has been temporarily closed for three months or longer.
- m. *Financial Responsibility.* Nassau County shall maintain Financial Responsibility, in accordance with 40 C.F.R. § 280.90 et seq.
- n. *Operator Training.* Nassau County shall provide operator training in accordance with 40 C.F.R. § 280.242(a)-(e).

13. **Centralized Monitoring System Requirements.**

- a. Nassau County shall implement a centralized monitoring system (CMS), comprising the installation of equipment for a CMS and the operation and maintenance of the CMS, for the Affected USTs as specified in this Section and in accordance with the schedules described in subparagraph c below for the facilities listed in Appendix A and Appendix B. This CMS shall be monitored for release detection from a central location, by an employee(s) of Nassau County and/or a third party (“third party” or “vendor/contractor”).
- b. The new release detection equipment installed at the Facilities must be compatible with the CMS, and existing release detection equipment must be upgraded and/or made compatible with the CMS. The CMS shall be configured with audible and visible alarms on the console panels for remote monitoring at all times. All alarms and testing data shall be transmitted to Nassau County and/or a third party’s data center at a centralized location. The alarms will alert the monitoring station personnel of any alarm conditions that the installed sensors detect. If an alarm is reported, Nassau County and/or a third party shall immediately initiate contact of the personnel responsible for addressing the alarm condition and conducting any necessary response, repair and/or investigation. The person and/or third party monitoring the CMS shall report all suspected releases or known releases to the NYSDEC Spill Hotline within 24 hours of identification of the suspected or known release, or sooner if required by state law. The CMS shall be used to trouble-shoot alarms remotely, to dispatch a repair crew to a facility that is experiencing alarm issues, and to ensure ongoing monitoring and other necessary work. The CMS shall also record and maintain at the centralized location all alarm data (including those arising from actual or suspected releases, spills or overfills of tanks, malfunction/failure of components, disconnection or failure of components) as well as system testing data. The CMS shall enable Nassau County and/or third party to access electronic records stored elsewhere on remote servers. Data retention shall be for five years or longer if the type of test result is required to be kept longer. Upon request of EPA, the person and/or the third party monitoring the CMS shall provide to EPA any requested information in their possession obtained or reported by the CMS.
- c. Schedules: For all USTs at Appendix A Facilities, Nassau County shall operate and maintain in good working condition the automated release detection equipment and CMS equipment, for at least three years commencing within 30 days of the Effective Date. For the USTs at each facility listed in Appendix B, operation of automated release detection equipment and CMS equipment at each such facility shall commence within 60 days of the deadline listed in Appendix B or by such other date approved by EPA. Operation and maintenance of the automated release detection equipment and CMS equipment for all USTs at the Appendix B Facilities shall continue until the end of the O&M period for the facilities listed in Appendix A.

14. **Recordkeeping Requirements.**

- a. **Release Detection Recordkeeping.** Nassau County shall maintain, for each UST system, all records required under 40 C.F.R. §§ 280.34, 280.41, 280.44, and 280.45, including release detection monitoring reports, centralized monitoring data, and line leak detector test data.
- b. **Periodic O&M Inspections.** Nassau County shall maintain records of the monthly and annual operation and maintenance walkthrough inspections in accordance with 40 C.F.R. § 280.36(a) & (b).
- c. Nassau County shall maintain documentation of operator training or comparable examination in accordance with 40 C.F.R. § 280.245. Upon request by EPA, Nassau County shall provide documentation of any retraining in accordance with 40 C.F.R. § 280.244.

15. **UST Closure.**

- a. Nassau County may, in lieu of bringing a UST system into compliance with the requirements of this Section, permanently close the UST system in accordance with 40 C.F.R. Part 280 Subpart G, and submit a written certification to EPA of the closure of the UST system in accordance with Paragraph 22. In that event, following the permanent closure the closed UST system shall be deemed not to be an “Affected UST” subject to the requirements of Paragraphs 11-13.
- b. Nassau County shall ensure that UST systems at the following four Facilities are, by the date(s) specified in Appendix B, permanently closed in accordance with 40 C.F.R. § 280.71-74: (i) the UST systems at the NICE Rockville Center Bus Depot facility, including the 1,000 gallon waste oil tank UST system; (ii) the UST systems at the NICE Garden City Norman Levy Bus Depot facility, (iii) the UST system that was emptied in 2016 at the Glen Cove Garage Facility; and (iv) the UST system that was emptied in 2017 at the Manhasset Garage Facility. Nassau County shall also ensure that installation of any replacement UST system and/or New USTs is completed at the above Facilities by the date of completion of the UST system repair and/or construction identified for each Facility listed in Appendix B.
- c. If, after 12 months, any temporarily closed UST system does not meet either the performance standards in 280.20 for new UST systems or the upgraded requirements in 280.21, Nassau County shall permanently close the UST system in accordance with 40 C.F.R. Part 280 Subpart G.
- d. Whenever Nassau County permanently closes an UST system and Nassau County submits a written certification of permanent closure for that UST system in compliance with requirements of Paragraph 22, the UST system may, upon EPA’s approval, then be added to Appendix C.

16. **Permits.** Where any compliance obligation under this Section requires Nassau County to obtain a federal, state, or local permit or approval, Nassau County shall submit timely and complete applications and take all other actions necessary to obtain all such permits and approvals. Nassau County 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 delay in obtaining, any permit or approval required to fulfill such obligation, if Nassau County has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.
17. In the event that, during the term of this Consent Judgment, the Administrator of EPA (or his delegate) approves the State of New York, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991e, to operate a UST program to regulate USTs, then the approved state UST regulations will be deemed to be the regulations applicable to Nassau County and shall replace the corresponding federal UST regulations cited in this Consent Judgment. In the event of an approved State UST program, EPA may enforce the approved state UST regulations pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

VI. CERTIFICATION AND REPORTING

18. **Initial Certifications.** Nassau County shall submit to EPA, by 90 days after the Effective Date, certifications for each Affected UST that it has timely completed the requirements under Paragraph 11, timely commenced the O&M (including O&M of the CMS) under Paragraphs 12 and 13 and Recordkeeping requirements under Paragraph 14 for that Affected UST. For any Affected UST that Nassau County is unable to so certify, it shall submit a report in accordance with the next Paragraph.
19. **Report in Lieu of Certification.** If Nassau County is unable to submit a certification required under this Consent Judgment, Nassau County shall instead submit to EPA, by the due date of the certification, a report: (i) identifying the Affected UST for which a certification was not provided; (ii) describing the requirement with which Nassau County has not complied; (iii) describing the likely cause of the noncompliance; (iv) describing any required task(s) to achieve compliance. Nassau County shall promptly correct all non-compliances. When Nassau County has remedied each non-compliance, it shall submit a follow-up report to EPA, within 60 days, certifying to its completion of the original compliance obligation.
20. **Semi-Annual Reports.** By July 30 and January 30 of each year, Nassau County shall submit semi-annual reports covering its compliance with the Consent Judgment for the two previous calendar quarters. The semi-annual reports shall be submitted from the Effective Date until the Consent Judgment is terminated, or as the Parties may otherwise agree in writing.
 - a. Each Semi-Annual Report shall include certifications covering each Affected UST attesting that Nassau County has been in compliance with the requirements of Paragraphs 11 through 14 with respect to that Affected UST for the six-month

reporting period. For any Affected UST that Nassau County is unable to so certify, it shall include with the Semi-Annual Report a report in accordance with Paragraph 19.

- b. Each semi-annual report shall describe all activities undertaken to implement the injunctive work under this Consent Judgment. The semi-annual reports shall indicate the status of the automated release detection equipment and CMS equipment at all of Nassau County's facilities and provide detail on all UST activities completed in the previous six months. Nassau County may use a third party (vendor/contractor) to help it prepare these reports, but the County shall remain responsible for the reports.
- c. The semi-annual reports also shall include:
 - i. Status of permit applications;
 - ii. Failed tests or deviant sensor readings, any reading other than "normal" of the release detection system for tanks and piping (e.g. inconclusive results), or any other non-compliance with release detection requirements for tanks and piping.

21. **Reporting of Suspected Releases.** Nassau County shall immediately report to EPA (in addition to the New York State Department of Environmental Conservation) any suspected release or unusual operating condition as provided by 40 C.F.R. § 280.50.

22. **Certification and Reporting Regarding UST Closure.**

- a. On January 30 of each year, Nassau County shall submit an annual Report covering the previous calendar year. Each annual report shall include a certification that Nassau County is in compliance with the requirements of Paragraph 15. For any Affected UST that Nassau County is unable to so certify, it shall include with the Report Regarding UST Closure a report in accordance with Paragraph 19.
- b. Nassau County shall submit to EPA, within 30 days of the Effective Date, a certification that it has completed permanent closure pursuant to 40 C.F.R. §§ 280.70 through 280.72 at all UST(s) at the facilities listed in Appendix C. This certification shall include a statement that Nassau County has complied with the requirement to maintain closure records pursuant to 40 C.F.R. §§ 280.34 and 280.74. For any UST that Nassau County is unable to so certify, it shall include with the UST Closure Report a report in accordance with Paragraph 19.
- c. Within 30 days after Nassau County permanently closes any existing Affected UST, Nassau County shall provide to EPA a written certification that the closure has been completed satisfactorily, as provided by 40 C.F.R. § 280 Subpart G Pursuant to Paragraph 15(d), above, the UST(s) may, upon EPA's approval, then be added to Appendix C. For any UST that Nassau County is unable to so certify,

it shall include with the UST Closure Report a report in accordance with Paragraph 19.

- d. Within 30 days of the date that Nassau temporarily closes any Affected UST, Nassau County shall provide to EPA a written certification that Nassau County is performing release detection monitoring required by 40 C.F.R. § 280.70(a) for the UST(s) that are not empty and that are temporarily closed. For any UST that Nassau County is unable to so certify, it shall include with the UST Closure Report a report in accordance with Paragraph 19.
23. Within 30 days of any request by EPA, or by another date approved by EPA in writing, Nassau County shall provide the following records and/or reports:
- a. Monthly and annual operation and maintenance walkthrough inspection records;
 - b. Monthly release detection for any UST system, including any UST system(s) that are in temporary closure;
 - c. A site assessment report for any UST permanently closed or removed;
 - d. Records showing that it tested overfill and/or spill prevention equipment and containment sumps used for interstitial monitoring of piping;
 - e. Records showing inspection of overfill and/or spill prevention equipment and containment sumps;
 - f. The results of the most recent integrity assessment, cathodic protection inspection, and/or lining inspection;
 - g. The results of the most recent annual line leak detector test;
 - h. Any known or suspected releases or unusual operating conditions; and
 - i. Any information needed by EPA to verify compliance with the requirements of this Consent Judgment.
24. Whenever any violation of this Consent Judgment or any other event affecting Nassau County's performance under this Judgment, or the performance of any of its Facilities, may pose an immediate threat to the public health or welfare or the environment, Nassau County shall notify EPA orally or by electronic transmission as soon as possible, but no later than 24 hours after Nassau County first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraphs.
25. Each report and certification submitted by Nassau County under this Consent Judgment shall be signed by an official of Nassau County (e.g., the Commissioner of the Department of Public Works) and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified

personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

26. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.
27. The reporting requirements of this Consent Judgment do not relieve Nassau County of any reporting obligations required by RCRA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.
28. 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.
29. Annual Report to the Court: On or before October 1 of each year after the lodging of this Consent Judgment, until termination of this Judgment pursuant to Section XVII, the United States, in consultation with Nassau County, shall submit to the Court an annual report on compliance and/or noncompliance with the requirements of this Judgment. Nassau County may submit to the Court a response or supplement to the United States' annual report to the Court on or before March 20 of each year.

VII. STIPULATED PENALTIES

30. Nassau County 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, but not limited to, the transfer provisions, the compliance, reporting, and recordkeeping requirements, and any work plan or schedules 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.
31. **Late Payment of Civil Penalty.** If Nassau County fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Nassau County shall pay a stipulated penalty of \$1,000 per day for each day that the payment is late.
32. **Compliance Milestones.** The following stipulated penalties shall accrue per violation per day for each violation of the requirements of Paragraph 11 (Installation, Upgrade and Other Requirements), Paragraph 12 (O & M), Paragraph 13 (CMS), and Paragraph 15 (UST Closure).

Penalty Per Violation Per Day

Period of Noncompliance

\$750	1st through 20th day
\$1500	21st through 45th day
\$3,500	46th day and beyond

33. If Nassau County transfers a Facility and fails to complete its automated release detection, including CMS, obligation for that Facility, Nassau County shall pay a stipulated penalty of \$5,000 for each Facility for each year of the required three-year centralized monitoring operating period in which the centralized monitoring system has not been operating.

34. **Reporting and Recordkeeping Requirements.** The following stipulated penalties shall accrue per violation per day for each violation of the requirements under Paragraphs 14, 18, 19, 20, 21, and 22.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 20th day
\$1,500	21st through 59th day
\$2,500	60th day and beyond

35. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Judgment.

36. Nassau County shall pay any stipulated penalty within 90 days of receiving the United States written demand therefor.

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

38. Stipulated penalties shall continue to accrue as provided in Paragraph 35, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by a decision of the United States that is not appealed to the Court or by agreement, Nassau County shall pay accrued penalties determined to be owing, together with Interest, to the United States within 90 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, Nassau County shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 90 days of receiving the Court’s decision or order, except as provided in subparagraph 38.c, below.
- c. If any Party appeals the District Court’s decision, Nassau County shall pay all accrued penalties determined to be owing, together with Interest, within the period required by the final appellate court decision.

39. Nassau County shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.
40. If Nassau County fails to pay stipulated penalties according to the terms of this Consent Judgment, Nassau County 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 Nassau County's failure to pay any stipulated penalties.
41. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Judgment shall be in addition to any other rights, remedies, or sanctions available to the United States for Nassau County's violation of this Consent Judgment or applicable law. Where a violation of this Consent Judgment is also a violation of the Act and its implementing regulations, Nassau County shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.
42. The payment of penalties and interest, if any, shall not alter in any way Nassau County's obligation to complete the performance of the requirements of this Consent Judgment.
43. *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 Nassau County's violation of this Judgment or applicable law, including but not limited to an action against Nassau County for stipulated 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

44. "Force majeure," for purposes of this Consent Judgment, is defined as any event arising from causes beyond the control of Nassau County, of any entity controlled by Nassau County, or of Nassau County's contractors that delays or prevents the performance of any obligation under this Consent Judgment despite Nassau County's best efforts to fulfill the obligation. The requirement that Nassau County 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) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Nassau County's financial inability to perform any obligation under this Consent Judgment.

45. 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, Nassau County shall provide notice orally or by electronic or facsimile transmission to the United States, within 72 hours of when Nassau County first knew that the event might cause a delay. Within seven days thereafter, Nassau County shall provide in writing to the United States 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; Nassau County'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 Nassau County, such event may cause or contribute to an endangerment to public health, welfare or the environment. Nassau County 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 Nassau County 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. Nassau County shall be deemed to know of any circumstance of which Nassau County, any entity controlled by Nassau County, or Nassau County's contractors knew or should have known.
46. 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 the United States for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The United States will notify Nassau County in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.
47. 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 Nassau County in writing of its decision.
48. If Nassau County 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, Nassau County 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 Nassau County complied with the requirements of Paragraph 45. If Nassau County carries this burden, the delay at issue shall be deemed not to be a violation by Nassau County of the affected obligation of this Consent Judgment identified to EPA and the Court.

IX. DISPUTE RESOLUTION

49. 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. Nassau County's failure to seek resolution of a dispute under this Section shall preclude Nassau County from raising any such issue as a defense to an action by the United States to enforce any obligation of Nassau County arising under this Consent Judgment.
50. **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 Nassau County 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 60 days after the conclusion of the informal negotiation period, Nassau County invokes formal dispute resolution procedures as set forth below.
51. **Formal Dispute Resolution.**
- a. Nassau County 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) of 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 Nassau County's position and any supporting documentation relied upon by Nassau County.
 - b. The United States shall serve its Statement of Position within 45 days of receipt of Nassau County'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 Nassau County, unless Nassau County files a motion for judicial review of the dispute in accordance with the following Paragraph.
 - c. Nassau County 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 30 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Nassau County'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.

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

52. **Standard of Review.**

- a. **Disputes Concerning Matters Accorded Record Review.** Except as otherwise provided in this Consent Judgment, in judicial review of any dispute brought under Paragraph 51 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or other items requiring EPA approval under this Consent Judgment; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Nassau County 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 51, Nassau County shall bear the burden of demonstrating that its position complies with this Consent Judgment, and applicable law.

53. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Nassau County under this Consent Judgment, unless and until final resolution of the dispute so provides. Except as otherwise set forth in this Consent Judgment, 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 51. If Nassau County does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

54. 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 Nassau County or its representatives, contractors, or consultants;
 - d. obtain documentary evidence, including photographs and similar data; and
 - e. assess Nassau County's compliance with this Consent Judgment.

55. Until five years after the termination of this Consent Judgment, Nassau County 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 Nassau County's performance of its obligations under this Consent Judgment. This includes, but is not limited to, reports required by Sections V and VI. 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, Nassau County shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.
56. At the conclusion of the information-retention period provided in the preceding Paragraph, Nassau County 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, Nassau County shall deliver any such documents, records, or other information to the United States. Nassau County may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Nassau County assert such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Nassau County. 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. This includes, but is not limited to, documents that Nassau County is required to provide to the United States pursuant to Sections V and VI.
57. Nassau County 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. If Nassau County makes a CBI claim, it shall provide at that time its comments on the points set out at 40 C.F.R. § 2.204(e)(4).
58. 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 Nassau County to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

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

60. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Judgment, except as expressly stated in Paragraph 59. 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 59. The United States further reserves all legal and equitable remedies to address any potential imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Nassau County's Facilities, whether related to the violations addressed in this Consent Judgment or otherwise.
61. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facilities or to Nassau County's violations, Nassau County 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 59.
62. 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. Nassau County is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Nassau County'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 Nassau County'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.
63. This Consent Judgment does not limit or affect the rights of Nassau County 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 Nassau County, except as otherwise provided by law.
64. This Consent Judgment shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Judgment.

XII. COSTS

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

XIII. NOTICES

66. 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: Diane C. Leonardo, Assistant U.S. Attorney
United States Attorney's Office
610 Federal Plaza
Central Islip, New York 11722

To EPA: Bruce H. Aber, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel, WTS Branch
290 Broadway, 16th Floor
New York, New York 10007-1866

Claudia Gutierrez
Team Leader, UST Team
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

To Nassau County: Jane Houdek
Counsel to the Department of Public Works
1194 Prospect Avenue
Westbury, New York 11590

Shila Shah-Gavnoudias, P.E.
Commissioner of Public Works
Nassau County Department of Public Works
1194 Prospect Avenue
Westbury, New York 11590-2723

67. Any Party may, by written notice to the other Parties, change its designated notice recipient or the notice address provided above.
68. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Judgment or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

69. 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

70. 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

71. Except as otherwise set forth in Note 1 of Appendices A through C, the terms of this Consent Judgment, including the 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.
72. 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 52 the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

73. After Nassau County has (a) satisfactorily complied with the transfer, compliance, and reporting and recordkeeping requirements of Sections II, V, and VI, for a period of three years, (b) completed the payment and requirements of Section IV and (c) paid any accrued stipulated penalties as required by this Consent Judgment, Nassau County may serve upon the United States a Request for Termination of the Consent Judgment. In that Request, Nassau County must state that it has satisfied all requirements of the Consent Judgment, together with all necessary supporting documentation.
74. Following receipt by the United States of Nassau County's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Nassau County 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 submit, for the Court's approval, a joint stipulation terminating the Consent Judgment.
75. If the United States does not agree that the Consent Judgment may be terminated, Nassau County may invoke Dispute Resolution under Section IX. However, Nassau County

shall not seek Dispute Resolution of any dispute regarding termination until 60 days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

76. 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. Nassau County 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 Nassau County in writing that it no longer supports entry of the Consent Judgment.

XIX. SIGNATORIES/SERVICE

77. Each undersigned representative of Nassau County and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and to execute and legally bind the Party that he or she represents to this document.
78. This Consent Judgment may be signed in counterparts, and its validity shall not be challenged on that basis. Nassau County 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, but not limited to, service of a summons.

XX. INTEGRATION

79. 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 the prior administrative CA/FO entered into by Nassau County and EPA in September 2012 and any other agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, and 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

80. 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 Nassau County.

XXII. APPENDICES

81. The following appendices are attached to and part of this Consent Judgment:

Appendix A is the list of Nassau County's Facilities with USTs as of August 2019.

Appendix B is the list of Nassau County Facilities with USTs that are under repair and/or construction and which have dates upon which such repair and/or construction shall be completed.

Appendix C is the list of Nassau County Facilities with USTs that are in permanent closure.

SO ORDERED:

Dated

United States District Judge

Signature Page for Consent Judgment in *U.S. v. County of Nassau*

FOR PLAINTIFF UNITED STATES OF AMERICA:

JONATHAN D. BRIGHTBILL
Principal Deputy Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

Dated: Central Islip, New York
September 30, 2020

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

By: _____

DIANE C. LEONARDO
MATTHEW SILVERMAN
Assistant United States Attorneys
Eastern District of New York
610 Federal Plaza
Central Islip, New York 11722

Signature Page for Consent Judgment in *U.S. v. County of Nassau*

New York, N.Y.

09/29/2020

Dated

ERIC SCHAAF

Digitally signed by ERIC
SCHAAF
Date: 2020.09.29 08:54:16
-04'00'

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



BRUCE H. ABER
Assistant Regional Counsel, Region 2
United States Environmental Protection Agency

Signature Page for Consent Judgment in *U.S. v. County of Nassau*

FOR DEFENDANT COUNTY OF NASSAU:

Westbury, New York

August 11, 2020
Dated



JANE HOUDEK, Esq.
Counsel to the Department of Public Works
1194 Prospect Avenue
Westbury, New York 11590

Mineola, New York

August 11, 2020
Dated



BRIAN F. SCHNEIDER
Deputy County Executive
Nassau County

APPENDIX A

Nassau County's Facilities with USTs as of August 2019. For purposes of the Consent Judgement, "Facility" means a facility at which there is a USTs or UST systems owned and/or operated by Nassau. This includes the federally-regulated USTs and UST system, as identified below, as well as any new facility(ies) that Nassau comes to own and/or operate at any time before termination of the Consent Judgement. As of August 2019, Nassau owns and/or operates the following Facilities:

1. Nassau County 4H Camp, 3186 Sound Ave, Riverhead, NY 11901
2. Atlantic Beach Bridge, Doughty Blvd, P.O Box 341 Lawrence, NY 11559
3. Bay Park Water Pollution Control Plant, 2 Marjorie Lane, E Rockaway, NY 11518
4. Cedar Creek Water Pollution Control Plant, 3340 Merrick RD, Wantagh, NY 11793
5. Nassau County Correctional Facility, 100 Carman Ave, East Meadow, NY 11554
6. Eisenhower Park, Hempstead Tpke, East Meadow, NY 11554
7. Nassau County Emergency Operations Center, 140-15th & West St, Mineola, NY 11510
8. Nassau County Family Court, 1200 Old Country Rd, Mineola, NY 11501
9. Firemens Training Center, 300 Winding Rd, Old Bethpage, NY 11804
10. Nassau County Police Department 2nd Precinct, 7700 Jericho Turnpike, Woodbury, NY 11797
11. Nassau County Police Department 3rd Precinct, 220 Hillside Ave, Williston, NY 11596
12. Nassau County Police Department 5th Precinct, 1655 Dutch Broadway, Elmont, NY 11003
13. Nassau County Police Department 6th Precinct, 100 Community Dr, Manhasset, NY 11030
14. Nassau County Police Department 7th Precinct, 3636 Merrick Rd., Seaford, NY 11783
15. Nassau County Police Department Emergency Services Bureau, 1255 Newbridge Rd, Bellmore, NY 11710
16. Nassau County Police Department Headquarters, 1490 Franklin Ave, Mineola, NY 11501
17. Nassau County Marine Bureau, 12 Sampson Ave, East Rockaway, NY 11518
18. Nassau Beach Maintenance Facility, 880 Lido Blvd, Long Beach, NY 11561
19. Nassau County Community College, 1 Education drive, Garden City, NY 11530
20. Nassau County Public Safety, 1194 Prospect Ave, Westbury, NY 11590
21. Royal Ave Pump Station - Royal Ave, Oceanside, NY 11572
22. Fox Rd. Pump Station - 18 Fox Rd, Baldwin, NY 11510
23. Millar St. Pump Station - 3355 Knight Street, Oceanside, NY 11571
24. Long Beach Pump Station - Long Beach Rd, Oceanside, NY 11572
25. Grand Ave. Pump Station - 3094 Grand Ave, Baldwin, NY 11510
26. Lido Blvd. Pump Station-- 24 Regents Drive, Lido Beach, NY 11561

Note 1 to Appendix A: Modifications. The list of Facilities in Appendix A may be modified: (i) following completion of the steps outlined in Paragraph 15(d) for all UST systems at a particular facility and following compliance with Paragraph 22; or (ii) upon Nassau County submitting a written request to EPA pursuant to Section XIII (Notices) and obtaining written approval from EPA. For purposes of Section XVI (Modification), such a modification does not constitute a “material change” to this Consent Judgment.

APPENDIX B

Nassau County Facilities with USTs that are under repair and/or construction with the dates by which such repair or construction work shall be completed.

1. Manhasset Garage, 320 Bayview Avenue, Manhasset, NY (1/30/2020)
2. Glen Cove Garage, 12 Morris Avenue, Glen Cove, NY (10/30/2020)
3. NICE Garden City Norman Levy Bus Depot Facility –700 Commercial Avenue, Garden City (9/30/2020)
4. NICE Rockville Centre Bus Depot Facility—50 Banks Avenue, Rockville Centre (9/30/2020)
5. Longmeadow Pump Station, Deep Woods Ct @ Longmeadow Lane, Glen Cove, NY (12/31/20)
6. Roslyn Village Pump Station, Skillman St @ Bryant Ave., Roslyn, NY (12/31/20)
7. Shorecrest Pump Station, Woodland Rd @Northfield Rd, Glen Cove, NY (12/31/20)
8. Glengariff Dr. Pump Station, End of Glengariff Dr., Glen Cove, NY (12/31/20)
9. Cold Spring Pump Station, Cold Spring Rd @ Calvert Dr, Syosset, NY (12/31/20)

Note 1: Modification to Appendix B: The list of Facilities in Appendix B and the dates for completion listed in this Appendix for the UST repair and/or construction work may be modified upon Nassau County submitting a written request to EPA pursuant to Section XIII (Notices) and obtaining written approval from EPA. For purposes of Section XVI (Modification), such a modification does not constitute a “material change” to this Consent Judgment.

APPENDIX C

FACILITIES WITH USTs THAT ARE IN PERMANENT CLOSURE

As of August 2019 Nassau owns and/or operates the following facilities where USTs have been permanently closed, subject to the certification to be made pursuant to Paragraph 22:

1. Administrative Building, 400 County Seat Dr. Mineola, NY 11501
2. Nassau Executive Building, 1 West St, Mineola, NY 11501
3. Glen Cove WWTP, 100 Morris Ave, Glen Cove, NY 11542
4. Hempstead Garage, 467 Baldwin Rd, Hempstead, NY 11550
5. Hicksville Garage, 170 Cantiague Rock Rd, Hicksville, NY 11801
6. Mitchel Field Complex, 1 Charles Lindberg Blvd, Uniondale, NY 11553
7. Nassau County Police Department 1st Precinct, 900 Merrick Road, Baldwin, NY 11510
8. Nassau County Police Department 4th Precinct, 1699 Broadway, Hewlett, NY 11557
9. Nassau County Police Department 8th Precinct, 286 Wantagh Ave, Levittown, NY 11714
10. Nassau Coliseum, 1255 Hempstead Turnpike, Uniondale, NY 11553
11. Grummen Building, 903 South Oyster Bay Rd, Hicksville, NY 11801
12. Sands Point Preserve, 127 Middle Neck Rd, Great Neck, NY 11050
13. Wantagh Park, 1 King Rd, Wantagh, NY 11793

Note 1: Modification to Appendix C: The list of Facilities in Appendix C may be modified following completion of the steps outlined in Paragraph 15(d) for all UST systems at a particular facility and following compliance with Paragraph 22. For purposes of Section XVI (Modification), such modification does not constitute a “material change” to this Consent Judgment.