

**Memorandum of Agreement Between the American Littoral Society,
Jamaica Bay Eco Watchers, Natural Resources Defense Council,
NY/NJ Baykeeper, the New York City Department of Environmental
Protection, and the New York State Department of Environmental
Conservation**

WHEREAS:

Introduction

A. American Littoral Society, Inc., is a nonprofit organization headquartered in Highlands, New Jersey, with chapters serving the Northeast, Mid-Atlantic, and Southeast regions, whose mission is to promote the study and conservation of marine life and its habitats. Jamaica Bay Eco Watchers is a community advocacy group based in Broad Channel, New York, dedicated to the preservation, enhancement, and restoration of the fragile ecosystem of Jamaica Bay. Natural Resources Defense Council, Inc. (“NRDC”) is a nonprofit environmental advocacy organization, headquartered in New York, New York, dedicated to protecting public health and the environment. Raritan Baykeeper, Inc. (“Baykeeper”), d/b/a NY/NJ Baykeeper, is a nonprofit organization headquartered in Keyport, New Jersey, whose mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson-Raritan Estuary. American Littoral Society, Jamaica Bay Eco Watchers, NRDC, and Baykeeper are collectively referred to herein as “the Citizen Groups.”

B. The New York City Department of Environmental Protection (“DEP”) is a municipal agency operating and having responsibility for the 14 municipal sewage treatment plants, known as Water Pollution Control Plants (“WPCPs”), which process the sewage generated within the City of New York. Four of the WPCPs, the 26th Ward WPCP, Jamaica WPCP, Rockaway WPCP and the Coney Island WPCP (together, “the Jamaica Bay WPCPs”), discharge treated effluent into Jamaica Bay or tributaries to Jamaica Bay.

C. The New York State Department of Environmental Conservation (“DEC”) is an executive agency of the State of New York, which among other things, has primacy to administer the Clean Water Act’s National Pollutant Discharge Elimination System (“NPDES”) Program in New York State, through the State Pollutant Discharge Elimination System (“SPDES”) Program. Pursuant to its authority, DEC has issued permits for the 14 WPCPs that are operated by DEP and process sewage generated within the City of New York, including the Jamaica Bay WPCPs. See Environmental Conservation Law §§ 17-0801, *et seq.* (McKinney’s 2006 & Supp. 2010) (hereafter “ECL”); 6 NYCRR Part 750.

D. The Citizen Groups, DEP, and DEC are collectively referred to herein as “the Parties.”

E. The purpose of this memorandum of agreement (“MOA”) is to provide a mechanism for the Citizen Groups to enforce certain commitments that DEP is bound to implement as set forth herein. The MOA further memorializes and renders enforceable agreements among the Parties that certain specified permit language will be proposed for inclusion in the Jamaica Bay WPCP SPDES permits as set forth herein; that the Parties will not oppose the modification of those SPDES permits to include the specified language; and that the Citizen Groups accept certain

limitations and conditions on their ability to enforce the specified permit language under the citizen suit provision of the Clean Water Act. The MOA also memorializes and, except as otherwise specified, renders enforceable other related agreements of the Parties as set forth herein.

Clean Water Act Citizen Suit Notice Letter and Settlement Discussions

F. On August 27, 2009, the Citizen Groups served, upon the City of New York and DEP, via certified mail, return receipt requested, a Notice of Violation and Intent to File Suit (“Notice Letter”) against the City under section 505 of the Clean Water Act, 33 U.S.C. § 1365. The Notice Letter alleged that the City and DEP have been violating, and continue to violate, the conditions of each of the SPDES permits issued by DEC for the Jamaica Bay WPCPs (“Jamaica Bay WPCP SPDES permits”) through the discharge of nitrogen, phosphorus, total biochemical oxygen demand and ammonia from the Jamaica Bay WPCPs in amounts that cause or contribute to violations of water quality standards for nitrogen, phosphorus, dissolved oxygen, and ammonia in Jamaica Bay and its tributaries. DEC designates the Jamaica Bay WPCP SPDES permits as Nos. NY-0026212 (26th Ward WPCP); NY-0026115 (Jamaica WPCP); NY-0026182 (Coney Island WPCP); and NY-0026221 (Rockaway WPCP).

G. On August 27, 2009, the Citizen Groups also served, via certified mail, return receipt requested, copies of the Notice Letter to the Commissioner of DEC, the Administrator of the United States Environmental Protection Agency (“EPA”), and the Regional Administrator of EPA Region 2.

H. DEP and the City have denied, and continue to deny, any violation of the conditions of the SPDES permits issued for the Jamaica Bay WPCPs.

I. In an effort to resolve the alleged violations set forth in the Notice Letter without the need for litigation, and with the shared goal of improving water quality in Jamaica Bay, the parties to this agreement have negotiated and agreed upon a set of commitments embodied in this MOA as a resolution of the Notice Letter.

J. Pursuant to the agreement among the Parties, DEP and the City have agreed to a set of commitments, including, *inter alia*, Biological Nitrogen Removal (“BNR”) upgrades at each of the Jamaica Bay WPCPs and separate centrate treatment at one of them, interim measures intended to reduce the amount of nitrogen discharged to Jamaica Bay pending completion of the upgrades, water quality monitoring in Jamaica Bay, funding for marsh restoration in Jamaica Bay, and a Feasibility Study to identify potential measures to further reduce nitrogen discharges from the Jamaica Bay WPCPs.

K. The aforementioned commitments, along with other obligations, have been included in a modification to the Consent Judgment In the Matter of the Application of DEP et al. v. State of New York, et al. (“First Amended Nitrogen Consent Judgment”), which has been signed by DEP, the City of New York, DEC, and the State of New York and will be submitted by those signatories to the court upon the Parties’ execution of this MOA.

L. During the aforementioned negotiations, the Citizen Groups maintained that certain work or requirements set forth in the First Amended Nitrogen Consent Judgment must be enforceable

by the Citizen Groups. DEP and DEC opposed the addition of the Citizen Groups as a party to the First Amended Nitrogen Consent Judgment.

M. In order to meet the Citizen Groups' demand for enforceability and address DEP and DEC's opposition to adding the Citizen Groups as parties to the First Amended Nitrogen Consent Judgment, the Parties agreed to mechanisms that provide the Citizen Groups certain specified rights as set forth herein.

N. First, the Parties have agreed to the modification of the SPDES permits for each of the Jamaica Bay WPCPs to include the language set forth in Appendix A to this MOA, which establishes a schedule of compliance for BNR upgrades to the Jamaica Bay WPCPs and reductions in numeric effluent limitations for nitrogen that take effect at specified times after upgrades to particular WPCPs are completed. The Citizen Groups have agreed to certain limitations on the relief they would seek in any action to enforce this permit language.

O. Second, the Parties have agreed to include in this MOA, and thereby render enforceable by the Citizen Groups, certain DEP commitments that relate to interim measures to reduce nitrogen discharges at the 26th Ward WPCP, water quality monitoring in Jamaica Bay, funding for marsh restoration in Jamaica Bay, and a Feasibility Study to identify potential measures to further reduce nitrogen discharges from the Jamaica Bay WPCPs, as set forth in this MOA.

P. Additionally, to address the Citizen Groups' request for an expedited resolution of a future administrative proceeding concerning the Jamaica Bay WPCP SPDES permits, the Parties have agreed to certain expedited procedures set forth in this MOA. The agreement to follow these expedited procedures does not represent, in any way, any intention of the Parties to be bound by such process in, or have such process serve as precedent in, any other proceedings related to the Jamaica Bay WPCP SPDES permits or any other SPDES permit.

Q. This MOA also sets forth the agreement of NRDC and Baykeeper to withdraw certain issues concerning the Jamaica Bay WPCP SPDES permits from a CPLR Article 78 Proceeding currently pending before the New York County Supreme Court.

NOW THEREFORE, the Parties agree as follows:

I. GENERAL

1. The Parties to this MOA are the American Littoral Society, Jamaica Bay Eco Watchers, Natural Resources Defense Council, Baykeeper, the New York City Department of Environmental Protection, and the New York State Department of Environmental Conservation.

2. This MOA shall apply to and be binding upon the Parties, and upon their officers, successors, and assigns. DEP shall give written notice of this Agreement to any successor in interest prior to transfer of ownership of the sewage treatment plants that are the subject of this Agreement, and shall verify to the Citizen Groups that such notice has been given.

3. Nothing herein is intended to render any provisions of the First Amended Nitrogen Consent Judgment enforceable by the Citizen Groups in an action to enforce the First Amended

Nitrogen Consent Judgment. Only the specific commitments set forth in this MOA are enforceable under this MOA, subject to any limitations set forth in this MOA.

4. For purposes of this MOA, except as otherwise provided herein, “First Amended Nitrogen Consent Judgment” means (i) the proposed consent judgment in the case captioned In the Matter of the Application of DEP et al. v. State of New York, et al. (N.Y. Sup. Ct., New York County, Index No. 04-402174), signed by the City of New York on April 22, 2011, DEP on April 22, 2011, the State of New York on April 27, 2011, and DEC on April 21, 2011; and (ii) that same consent judgment as entered by the court (exclusive of any modifications to such consent judgment subsequent to its entry), provided it is entered in the form submitted to the court, without modification, except that ministerial changes by the court shall not constitute modification.

II. WATER QUALITY MONITORING

5. All references herein to the “pre-construction monitoring plan” and to reports of monitoring conducted under that plan refer to the pre-construction ambient water quality monitoring plan and associated monitoring and reporting requirements defined in paragraphs VII.D.1 of the First Amended Nitrogen Consent Judgment. All references herein to “post-construction monitoring plans” and to reports of monitoring conducted under such plans refer to the post-construction ambient water quality monitoring plans and associated monitoring and reporting requirements defined in paragraphs VII.D.2 of the First Amended Nitrogen Consent Judgment.

6. DEP will provide the Citizen Groups with copies of any requests it submits to DEC to modify the schedule to implement the pre-construction monitoring plan, concurrently with its submission of such requests to DEC. The Citizen Groups may submit comments on any such requests to DEP and DEC for their consideration.

7. DEP will provide the Citizen Groups with copies of any final written determination from DEC to any DEP request covered by paragraph 6.

8. DEC will retain final approval authority over the pre-construction monitoring plan and enforcement of compliance with implementation of the plan.

9. DEP will provide the Citizen Groups with copies of all quarterly reports of pre-construction monitoring results, concurrently with its submission of such reports to DEC.

10. No later than 18 months prior to the date DEP is required to submit an approvable Phase I post-construction monitoring plan to DEC, the Citizen Groups, DEP, and DEC will each appoint one member to the Post-Construction Monitoring Technical Panel (“Panel”). The Panel will consist of three members, one each from, or designated by, the Citizen Groups, DEP and DEC. All appointees to the Panel must possess the following minimum qualifications: Licensed Professional Engineer or post-graduate degree in a relevant field and professional experience in a minimum of one of the following categories: Water Quality Modeling; Ecological Studies and Monitoring Programs; Wastewater/Biological Treatment Processes.

11. The Parties will jointly instruct the members of the Panel that their role is to advise DEP and DEC with respect to the formulation of Phase I post-construction monitoring to be conducted after the start of operation of the 26th Ward and Jamaica WPCP upgrades and concurrently, to the extent practicable, provide input into the design of Phase II post-construction monitoring to be conducted after completion of construction of the Rockaway and Coney Island WPCP upgrades.

12. The Parties will jointly notify the Panel of the required elements of the Phase I and Phase II post-construction monitoring plans that are set forth in the First Amended Nitrogen Consent Judgment, Part VII.D.2.a.

13. The Parties will jointly instruct the Panel that it may suggest changes to the Jamaica Bay water quality model as it deems appropriate. DEC and DEP shall review any such changes suggested by the Panel.

14. Upon request by any Panel member, DEP and DEC will provide all members of the Panel with reasonable access to any non-privileged, final documents or information in their possession that are directly related to the Panel's charge, without cost to any Panel member or the Citizen Groups.

15. The Parties will jointly instruct the Panel members that their recommendations must be submitted in one report to the Parties by no later than 6 months prior to DEP's milestone under the First Amended Nitrogen Consent Judgment to submit an approvable Phase I post-construction monitoring plan to DEC, or 6 months prior to the expiration of any lawful extension of such milestone, whichever is later. In the event the Panel fails to submit its recommendations 6 months prior to DEP's requirement to submit an approvable Phase I post construction monitoring plan, DEP will not be required to consider the recommendations in either its Phase I or Phase II post construction monitoring plans.

16. Each Party will make its best efforts to ensure that the person it appointed to the Panel takes all steps necessary to meet the milestone set forth in Paragraph 15.

17. DEP will consider the recommendations of any report submitted on schedule pursuant to paragraph 15 in developing its proposed post-construction monitoring plans and, for any such recommendation not adopted, will provide an explanation in the submittal to DEC.

18. DEP will comply with the schedules set forth in paragraphs VII.D.2.e. and VII.D.2.f. of the First Amended Nitrogen Consent Judgment for commencement and completion of Phase I and Phase II post-construction monitoring, subject to the following limitations on enforceability. The Citizen Groups may seek to enforce these milestones only if DEP misses the milestone by more than 12 months and:

- i. DEC has not provided its written consent to DEP to defer DEC's enforcement of such milestone by more than 12 months and DEC fails to diligently prosecute DEP's failure to meet such milestone in

accordance with the terms of the First Amended Nitrogen Consent Judgment; or

- ii. DEC has provided its written consent to DEP to defer DEC's enforcement of any single milestone by a period (or multiple periods with a cumulative length) of more than 12 months, and that written consent is not related to a delay in meeting a milestone prerequisite to the commencement or completion of post construction monitoring, and a court finds that DEC has not diligently prosecuted DEP's failure to meet the original milestone.

19. DEP will provide the Citizen Groups with a copy of any request it submits to DEC seeking to extend by more than 6 months the milestones for commencement or completion of post-construction monitoring set forth in the First Amended Nitrogen Consent Judgment, concurrently with its submission of such request to DEC. The Citizen Groups may submit comments on any such request to DEP and DEC for their consideration.

20. DEP will provide the Citizen Groups with a copy of the final, approved Phase I and Phase II post-construction monitoring plans and any approved modifications thereto.

21. DEC will retain final approval authority over the post-construction monitoring plans, including any proposed modifications thereto, and over enforcement of compliance with implementation of the plans. Nothing in this paragraph shall limit the enforceability by any Party of paragraphs 6, 9-15, 17-19 and 22 of this MOA.

22. DEP will provide the Citizen Groups with copies of all quarterly reports of the post-construction monitoring results, concurrently with its submission of such reports to DEC.

23. Specific performance shall be the only remedy available for enforcement of paragraphs 6, 9-15, 17-19 and 22, subject to the provisions below in Part X. No other provisions in Section II shall be enforceable.

III. MARSH RESTORATION

24. All references herein to the expenditure of funds for marsh restoration refer to the requirements concerning marsh restoration defined in paragraphs II.B. of the First Amended Nitrogen Consent Judgment. All references herein to the Intergovernmental Work Group On Marsh Restoration ("IGW") refer to the group defined in paragraphs II.B.2.n7 & VII.A. of the First Amended Nitrogen Consent Judgment

25. DEP will provide the Citizen Groups with proposals for the expenditure of funds paid or secured pursuant to paragraph 27.b on specific projects developed by the IGW pursuant to Part II.B of the First Amended Nitrogen Consent Judgment. DEC and DEP will provide the Citizen Groups a reasonable opportunity to meet with the IGW to consult and advise in the selection of each such project. Additionally, upon the submission of any request for appropriations from the Marine Resources Account of funds paid into such account pursuant to

paragraph 27.a, DEC will provide the Citizen Groups with a copy of such request for appropriations.

26. DEP will provide the Citizen Groups with a copy of DEC's written approval of projects selected by the IGW.

27. a. Within 60 days of effective date of the First Amended Nitrogen Consent Judgment, DEP will pay \$2 million to the New York State Marine Resources Account. Such funds shall be spent as specified in Part II.A of the First Amended Nitrogen Consent Judgment.

b. DEP will pay funds into a dedicated account, in the manner set forth in Part II.B.2 of the First Amended Nitrogen Consent Judgment, to be used for Jamaica Bay saltwater marsh restoration projects in the interior of Jamaica Bay (i.e., not in the bay's tributaries or at sites on the exterior, peripheral shoreline of the bay), subject to paragraph 29 below, pursuant to the following schedule::

- i. 60 days from effective date of Judgment- \$1,025,000
- ii. By August 31, 2011 - \$3 million
- iii. By December 31, 2012 - \$2 million
- iv. By December 31, 2013 - \$4 million
- v. By December 31, 2014 - \$3 million, except that DEP shall not be required to make such payment if, prior to December 31, 2014, DEP has secured,¹ from other non-federal sources, \$3 million, exclusive of any funds DEP counts towards satisfaction of the requirements of sub-paragraphs "a" and "b.i" through "b.iv" of this paragraph, for payment into the same account into which DEP would otherwise be required to make payment under sub-paragraph "b" of this paragraph.

DEP's obligation to pay funds as set forth in this Paragraph shall be satisfied if the funds are paid by the City or any City agency.

28. DEP will provide the Citizens Groups with written notification, upon request, that DEP has completed the required transfer of funds set forth in paragraph 27, or in the case of paragraph 27.b.v, that such transfer of funds is not required.

29. DEP may, at any time, request that transferred funds be spent on Jamaica Bay restoration projects other than interior saltwater marsh restoration projects, and will identify specific projects proposed by the IGW in any such request. In reviewing such request, the

¹ Funds that have been paid, or are payable, as a penalty or fine, or to fund an EBP or Supplemental Environmental Project, cannot be used to satisfy this funding obligation.

Citizen Groups shall consider the input of and any recommendations from the IGW, as well as the potential benefit of such projects to the ecological health of Jamaica Bay. Upon written consent of the Citizen Groups, the transferred funds may be used in the manner identified. DEC shall not authorize the use of funds for projects other than interior saltwater marsh projects except upon written consent by the Citizen Groups pursuant to this paragraph.

30. DEC will retain final approval authority over EBPs and enforcement of compliance with implementation of EBPs. "EBPs" refers to Environmental Benefit Projects as set forth in Part II.B. of the First Amended Nitrogen Consent Judgment. Nothing in this paragraph shall limit the enforceability by any Party of paragraphs 25 and 27-29.

31. Specific performance shall be the only remedy available for enforcement of paragraphs 25 and 27-29, subject to the provisions below in Part X. No other provisions in Section III shall be enforceable.

IV. FEASIBILITY STUDY

32. All references herein to the "Feasibility Study" refer to the Feasibility Study requirements defined in paragraphs VII.C. of the First Amended Nitrogen Consent Judgment.

33. Within 12 months of the start of Phase I post-construction monitoring, DEP shall commence a feasibility study designed to evaluate the latest nitrogen-removal technologies, and optimization techniques for existing infrastructure, to identify potential measures to reduce nitrogen discharges from Jamaica Bay WPCPs and improve DO water quality in Jamaica Bay (the "Jamaica Bay Feasibility Study"). The Jamaica Bay Feasibility Study may include bench-scale testing of one or more technologies. DEP shall allocate up to \$1,000,000 for the Jamaica Bay Feasibility Study.

34. DEP shall make a draft of the Jamaica Bay Feasibility Study available for public comment within two years of initiating it. DEP shall release the final study to the public six months after the draft is made available.

35. DEP will provide the Citizen Groups with a copy of any request to extend by more than six months the milestone for commencement of the Feasibility Study set forth in the First Amended Nitrogen Consent Judgment, concurrently with its submission of such request to DEC.

36. DEC will retain authority to enforce compliance with DEP's commitment to commence the Jamaica Bay Feasibility Study. Nothing in this paragraph shall limit the enforceability by any Party of paragraphs 34 and 35.

37. Specific performance shall be the only remedy available for enforcement of paragraphs 34 and 35, subject to the provisions below in Part X. No other provisions in Section IV shall be enforceable.

V. BNR UPGRADES

38. All references herein to the commencement of operation of interim centrate treatment at the 26th Ward WPCP (Aeration Tank No. 3) refer to the requirements defined in paragraphs V.C.1 of the First Amended Nitrogen Consent Judgment.

39. DEP will comply with milestone number 15 set forth in Appendix B to the First Amended Nitrogen Consent Judgment for the commencement of operation of interim centrate treatment at the 26th Ward WPCP (Aeration Tank No. 3), subject to the following limitations on enforceability. The Citizen Groups may seek to enforce this milestone only if DEP misses the milestone by more than 12 months and:

- i. DEC has not provided its written consent to DEP to defer DEC's enforcement of such milestone by more than 12 months and DEC fails to diligently prosecute DEP's failure to meet such milestone in accordance with the terms of the First Amended Nitrogen Consent Judgment; or
- ii. DEC has provided its written consent to DEP to defer DEC's enforcement of such milestone by a period (or multiple periods with a cumulative length) of more than more than 12 months, and that written consent is not related to a delay in meeting a milestone prerequisite to the commencement of operation of interim centrate treatment at the 26th Ward WPCP (Aeration Tank No. 3), and a court finds that DEC has not diligently prosecuted DEP's failure to meet the original milestone.

40. DEP will provide to the Citizen Groups a copy of any request it submits to DEC to extend by more than six months the milestone for commencement of operation of interim centrate treatment at the 26th Ward WPCP (Aeration Tank No. 3) set forth in the First Amended Nitrogen Consent Judgment, concurrently with its submission of such request to DEC. The Citizen Groups may submit comments on any such request to DEP and DEC for their consideration.

41. DEP will provide the Citizen Groups with copies of any final written determination by DEC on any DEP request covered by paragraph 40. The Citizen Groups agree to accept electronic copies of such determinations.

42. DEC has sole enforcement authority regarding compliance with the substance of DEP's commitment to commencement of operation of interim centrate treatment at the 26th Ward WPCP (Aeration Tank No. 3). Nothing in this paragraph shall limit the enforceability by any Party of paragraphs 39 and 40 of this MOA.

43. Specific performance shall be the only remedy available for enforcement of paragraphs 39 and 40, subject to the provisions below in Part X. No other provisions in Section V shall be enforceable.

VI. CITIZEN GROUPS' WITHDRAWAL OF JAMAICA BAY NITROGEN ISSUE FROM PENDING ARTICLE 78 PROCEEDING

44. NRDC and Baykeeper will, within 14 days after receiving notice of the court's entry of the First Amended Nitrogen Consent Judgment, voluntarily withdraw their Third Cause of Action in the Article 78 Proceeding captioned *In the Matter of Natural Resources Defense Council, et al. v. Alexander B. Grannis, et al.*, New York Supreme Court Index Number 110898-2010, which cause of action consists of their claims relating to their request for an adjudicatory hearing on the nitrogen and BOD effluent limitations applicable to the four Jamaica Bay WPCPs. NRDC and Baykeeper will encourage the remaining petitioners in that proceeding (Riverkeeper and Long Island Soundkeeper) to join in the withdrawal of that cause of action. No Party to this MOA shall argue that the withdrawal of that claim has any procedural or substantive effect on the resolution of the remaining issues raised in that proceeding.

45. If any petitioner in the Article 78 proceeding fails to withdraw their third cause of action as set forth in paragraph 44 above (except if such failure results from the court's rejection of a stipulation to withdraw such cause of action), sections II., III., IV., V., VII. (paragraphs 46-50), and IX. of this MOA shall have no force and effect.

VII. MODIFIED PERMIT LANGUAGE

46. Within 30 days of the effective date of this First Amended Nitrogen Consent Judgment, DEP will submit to DEC a request to modify each of the Jamaica Bay WPCP SPDES permits for the exclusive purpose of including the exact language set forth in Appendix A to this MOA.

47. DEC will publish formal notice of proposed modifications to each of the Jamaica Bay WPCP SPDES permits to include the exact language set forth in Appendix A to this MOA, subject to all required procedures for notice and comment and opportunities for a hearing. DEC shall not include any other changes to the permits in its proposed permit modifications.

48. DEP, DEC, and the Citizen Groups consent and agree not to oppose the adoption of the permit modifications proposed pursuant to paragraph 47. Nothing in this paragraph shall be deemed to limit DEP's or the Citizen Groups' rights, in any context other than an administrative proceeding arising from the DEC notice issued under paragraph 47 or a judicial proceeding arising from final action by DEC taken pursuant to such notice, to request or object to any modifications, renewals, extensions, reissuances, or other administrative actions concerning the Jamaica Bay WPCP SPDES permits.

49. If DEC receives no objections to the permit modifications proposed pursuant to paragraph 47 within the required comment period, or determines that any objections submitted within the required comment period do not raise substantive and significant issues within the meaning of 6 NYCRR Parts 621 and 624, DEC will expeditiously issue modified permits for each of the Jamaica Bay WPCPs including the exact language set forth in Appendix A to this MOA.

50. If entities other than DEP or the Citizen Groups request or commence administrative or civil legal proceedings concerning the permit modifications proposed under paragraph 47, DEP and the Citizen Groups will support the adoption of those permit modifications, and DEP will support any application by one or more of the Citizen Groups for full party status to support the adoption of the permit modifications.

51. This paragraph applies only after the Jamaica Bay WPCP SPDES permits are modified pursuant to paragraphs 46-50 herein.

a. In any citizen suit commenced under Section 505 of the Clean Water Act (33 U.S.C. § 1365) alleging a violation of a “schedule of compliance” that appears in Appendix A and has been included in a modified SPDES permit, the Citizen Groups will seek injunctive relief only (i.e., no monetary penalties), but may seek attorneys fees and costs.

b. The Citizen Groups will not seek judicial relief for any alleged violation of a milestone that appears in a “schedule of compliance” in Appendix A and has been included in a modified SPDES permit if DEC has provided its written consent to DEP to defer DEC’s enforcement of such milestone for a period (or multiple periods with a cumulative length) of six months or less (the “deferred enforcement period”) and the deferred enforcement period has not yet lapsed, or if DEC has issued or obtained an order concerning a violation of such milestone that includes a new milestone for compliance that is no later than six months from the milestone appearing in the permit and such new milestone has not yet passed. If, after any such milestone is initially extended by six months or less (either by DEC consent to a deferred enforcement period or by an order concerning a violation of such milestone), DEP seeks a further extension that is more than six months beyond the original milestone, the Citizen Group may only seek to enforce the initial extended milestone, not the original milestone.

c. In any citizen suit commenced under Section 505 of the Clean Water Act (33 U.S.C. § 1365) alleging a violation of the permit language that appears in Appendix A and has been included in a modified SPDES permit, DEP will not raise as a defense any argument that such permit terms are unlawful or that DEC’s insertion of replacement permit pages with the calculated performance-based effluent limits, as provided in that permit language, represent an unlawful modification of the permits.

d. This MOA does not create any rights or cause of action to enforce any milestones and nitrogen limits that have been included in a modified SPDES permit.

VIII. EXPEDITED ADMINISTRATIVE PROCEDURES FOR A FUTURE PERMIT MODIFICATION PROCEEDING

52. References to NYSECL Article 70 and 6 NYCRR Parts 621 and 624 in this Section refer to the statute and regulations in effect on the date the MOA is executed by DEP, DEC and the Citizen Groups and, as applicable, successors to the NYSECL Article 70 and 6 NYCRR Parts 621 and 624.

53. Within six months from DEP’s submission of a complete application for SPDES Permit modifications and variance pursuant to paragraph IV.A. or IV.B of the First Amended

Nitrogen Consent Judgment, DEC will either publicly notice, in accordance with NYSECL §70-0109 and 6 NYCRR 621.7, draft modified SPDES permits for each of the four Jamaica Bay WPCPs or will inform DEP of the denial of its application. The following expedited hearing process will apply to any issues conference or adjudicatory hearing concerning the draft modified permits and variance requests or DEC's denial of the application:

a. Except as set forth in paragraphs "b" and "c" below, all time periods specified in ECL Article 70 and 6 NYCRR Part 621 will apply. Pursuant to ECL §70-0109 and 6 NYCRR Section 621.14, any time period specified in Article 70 of the NYSECL or 6 NYCRR Part 621 may be extended for good cause by mutual written consent of DEC and DEP.

b. The Parties will not file any interlocutory appeals (provided that a regulation is in effect at that time that preserves all appeals of interlocutory rulings until after a hearing, such as the current 6 NYCRR 624.8(d)(6)). For purposes of this paragraph, an interlocutory appeal is defined as an appeal taken prior to the conclusion of an adjudicatory hearing or the issuance of a final issues ruling that determines there is no need for an adjudicatory hearing on any issue. In the event another party to the proceeding files an interlocutory appeal, the Parties will have the same rights set forth in the regulations for interlocutory appeals.

c. DEC agrees to the following time frames as related to Permit Hearing Procedures set forth in 6 NYCRR Part 624:

i. Issues Ruling (6 NYCRR 624.4). The Administrative Law Judge shall issue an Issues Ruling 30 days after the completion of the Issues Conference. The Issues Conference shall be considered completed no later than 30 days after the receipt of authorized written submittals or, in the event that no submittals are authorized, no later than 30 days after receipt of the Issues Conference transcript and the Issues Conference participants' corrections to the transcript.

ii. Commissioner's decision on the Hearing Report (6 NYCRR 624.13). The Commissioner shall issue a decision 60 days after the parties are notified of the official closing of the Adjudicatory Hearing record, except that if the Hearing Report is circulated as a recommended decision, then 30 days after the close of the record, such event occurring at the expiration of the time allowed for comment on the recommended decision. 6 NYCRR 624.8(a)(5) defines close of record. If the Hearing Report is circulated as a recommended decision, the Commissioner will schedule the time period for comments on the recommended decision. The schedule for comments and any replies on a recommended decision will be no greater than 60 days.

d. Nothing in this paragraph 53 shall be deemed to bind participants to the administrative proceeding, other than the Parties.

e. The Parties each retain all rights concerning DEC's draft modified permits or DEC's denial of DEP's applications that are not specifically waived in this paragraph 53.

IX. ADDITIONAL REQUIREMENTS TO PROVIDE COPIES OF CERTAIN DOCUMENTS TO THE CITIZEN GROUPS

54. In addition to any requirements set forth above, DEP will provide the Citizen Groups with copies of the following submittals required under the First Amended Nitrogen Consent Judgment (or, if the First Amended Nitrogen Consent Judgment is modified by the court subsequent to its entry, the corresponding paragraph of such modified version of the First Amended Nitrogen Consent Judgment as is in effect) concurrently with submission to DEC:

- a. Feasibility Study, paragraph VII.C. of the First Amended Nitrogen Consent Judgment;
- b. Final report evaluating the usage of the fourth aeration tank at Rockaway WPCP, milestone 4 in Appendix B to the First Amended Nitrogen Consent Judgment (already provided);
- c. 26th Ward WPCP –Update to Sludge Optimization Plan, paragraph V.C.6. of the First Amended Nitrogen Consent Judgment;
- d. Phase I and Phase II post-construction monitoring plans, paragraph VII.D.2. of the First Amended Nitrogen Consent Judgment;
- e. City–Wide Biosolids Centrate Facility Report, paragraph VII.B. of the First Amended Nitrogen Consent Judgment;
- f. all Quarterly Reports submitted pursuant to Part XII.A. of the First Amended Nitrogen Consent Judgment .

When providing any Quarterly Report pursuant to paragraph 54.f, DEP will also provide copies of the Monthly Operating Reports (submitted pursuant to the Jamaica Bay WPCP SPDES permits) for the three months corresponding to the period covered by that Quarterly Report.

X. ENFORCEMENT

55. The respective commitments of the Parties in this MOA are in consideration of each other, thereby making this MOA a legally binding contract enforceable by any Party subject only to the limitations herein and such other limitations as may arise under the law of the State of New York.

56. The Parties intend that specific performance shall be the only remedy for breaches of the enforceable commitments set forth in this MOA.

57. The Citizen Groups shall not be eligible for any relief pursuant to this MOA for a violation by DEP of a milestone DEP is required to meet under paragraph 34 and 35 unless DEP has missed the milestone by more than 12 months.

58. In any action commenced to enforce this MOA, damages for breach of this MOA shall not be available, nor shall attorneys' fees and costs. The Parties agree that the court in which such action is brought may enforce the obligations of this MOA by specific performance.

59. No action shall be commenced alleging a breach of this MOA prior to sixty days after the Party commencing such action has given notice to all other Parties of the alleged breach. During this sixty day period, the Parties shall make reasonable efforts to resolve any disputes. If, during the sixty day period, the Party alleged to be in breach cures the alleged non-compliance, then the Party alleging the breach shall be barred from obtaining any judicial relief for the alleged breach. The sixty day notice period can run concurrently with the final sixty days of any 12 month period set forth in paragraphs 18, 39, or 57.

60. Any action to enforce the terms of this MOA must be brought in the Supreme Court of the State of New York, New York County, and any such action will be governed by the laws of the State of New York.

61. Any action to enforce this MOA shall be brought within 6 months of the earliest date on which the commencement of such action is authorized under this MOA, or within six months of the date on which the party commencing the action knew or should reasonably have known of the alleged breach, whichever is later.

XI. GOVERNING PROVISIONS

62. This agreement is not intended to confer any rights not specifically set forth herein, nor is it intended to authorize a cause of action in court prior to the exhaustion of administrative remedies where applicable.

63. Nothing in this MOA shall be construed as affecting the obligations of DEP, DEC or the Citizen Groups under applicable federal or state laws or regulations.

64. The Parties retain all legal defenses in any action commenced to enforce this MOA.

65. Nothing herein absolves DEP from its obligation to comply with, or, except as specifically provided herein, limits the Citizen Groups' right to enforce, any requirements in the Jamaica Bay WPCP SPDES permits, as may be amended from time to time.

XII. SATISFACTION OF CLAIM

66. The Citizen Groups covenant not to sue the City and/or DEP for any claim that alleges that the City and/or DEP are violating the conditions of one or more of the Jamaica Bay WPCP SPDES permits because of the discharge of nitrogen, phosphorus, total biochemical oxygen demand and/or ammonia in treated effluent from one or more of the Jamaica Bay WPCPs in amounts that cause or contribute to violations of water quality standards for nitrogen, phosphorus, dissolved oxygen, and/or ammonia in Jamaica Bay and/or its tributaries, except that such covenant shall not apply if:

a. the Citizen Groups file a suit on or after January 1, 2013 and, at the time the suit is filed, DEC has not yet modified each of the Jamaica Bay WPCP SPDES permits to include the exact language set forth in Appendix A to this MOA; or

b. DEC has modified each of the Jamaica Bay WPCP SPDES permits to include the exact language set forth in Appendix A to this MOA but the City and/or DEP has argued in a future legal proceeding that the permit language set forth in Appendix A is illegal, and a court has enjoined the effectiveness of, or otherwise declared to be invalid, any portion of such permit language; or

c. the First Amended Nitrogen Consent Judgment has been modified (including by termination or supercession by another consent judgment) in such a way that the effective date of such performance-based interim nitrogen limit is significantly delayed,² or the methodology used to calculate, or (if already calculated) the numeric value of, any performance-based interim nitrogen limit thereunder is rendered significantly less stringent than it would have been absent such modification to the First Amended Consent Judgment.

Unless otherwise terminated pursuant to subparagraph a, b, or c of this paragraph 66, this covenant not to sue expires on December 31, 2024, or upon completion of Phase II post construction monitoring, whichever comes earlier. Nothing in this MOA shall serve as a waiver of Citizen Groups' right to enforce any provision of the Jamaica Bay WPCP SPDES permits or bring any other legal or administration action, except as expressly provided in this paragraph 66. DEP and the City reserve all defenses to any such legal action.

XIII. CONTACT INFORMATION FOR SERVICE OF DOCUMENTS OR REPORTS

67. Service of documents or reports upon the following individuals will satisfy DEP's obligations to provide documents or reports to the Citizen Groups as set forth above:

² For purposes of this paragraph, a delay in the effective date of a performance-based interim nitrogen limit is defined as an extension in the length of time following completion of a milestone prerequisite to the calculation of such limit, or the length of time following the calculation of such limit, before which such limit takes effect as an enforceable limit under the First Amended Nitrogen Consent Judgment. For example, an extension in the number of months between completion of construction or commencement of operation of a WPCP upgrade and the date on which the associated performance-based interim nitrogen limit takes effect would constitute a delay in the effective date of such limit. Notwithstanding this definition, any modification of the First Amended Nitrogen Consent Judgment to establish an interim nitrogen limit to allow for unscheduled maintenance or repairs prior to the completion of all milestones prerequisite to the calculation of a performance-based interim nitrogen limit shall not trigger this subparagraph c.

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68. The Citizen Groups agree to electronic service of documents or reports when available.

XIV. SUBMISSION OF FIRST AMENDED NITROGEN CONSENT JUDGMENT TO THE COURT FOR APPROVAL

69. DEP shall provide the Citizen Groups with a copy of any order entering the First Amended Nitrogen Consent Judgment (or any other order on the merits of DEC and DEP's request to enter the First Amended Nitrogen Consent Judgment) within 10 days of DEP's receipt of that order.

XV. EFFECTIVE DATE

70. a. This MOA shall become effective upon execution by all Parties of this MOA and entry of the First Amended Nitrogen Consent Judgment by the court.

b. Notwithstanding paragraph 70.a., if the court enters the First Amended Nitrogen Consent Judgment with one or more modifications relating to the Jamaica Bay commitments, any Party that believes the court's modifications to the First Amended Nitrogen Consent Judgment are significant and material to the terms of this MOA shall, within 30 days of such entry, provide written notice to the other Parties. Upon provision of such notice, the Parties shall have 60 days to renegotiate those terms of the MOA that have been affected by the court's modifications to the First Amended Nitrogen Consent Judgment, as identified by the Party providing the notice described in this subparagraph. The Parties agree to negotiate expeditiously and in good faith to address any affected terms of the MOA so that a modified version of this MOA can be executed to reflect as nearly as possible the original intent of the Parties as to the obligations that would have been binding on all Parties had the First Amended Nitrogen Consent Judgment been entered in the exact form it was submitted to the court. In the event the Parties are unsuccessful in reaching agreement on the terms of a modified MOA after 60 days, all terms of this MOA shall be null and void. The 60-day renegotiation period may be extended by agreement of the Parties.

XVI. TERMINATION

71. This MOA shall be deemed completely satisfied and shall terminate on December 31, 2024, or upon completion of Phase II post construction monitoring, whichever comes earlier; or upon the commencement of any suit brought by the Citizen Groups under any of the exceptions set forth in paragraph 66.a., b., or c. In the event there is pending litigation pertaining to the one or more provisions of this MOA at such time, and that litigation was filed prior to the termination of this MOA, that pending litigation shall not be affected by the termination of this MOA pursuant to this paragraph.

XVII. MODIFICATION OF AGREEMENT

72. The terms of this MOA may only be modified upon the written agreement of all Parties.

XVIII. SEVERABILITY

73. If any provision or provisions of this MOA is held to be invalid, illegal, or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

XIX. COMPLETE AGREEMENT

74. This agreement constitutes the entire agreement of the Parties.

XX. COUNTERPARTS

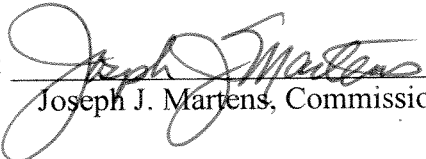
75. This MOA may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts. This MOA shall be deemed to be executed upon signature by all of the Parties.

XXI. REPRESENTATIVE AUTHORITY

76. Each undersigned representative of the Parties certifies that he or she is fully authorized by the Party to enter into, execute, and bind such Party to this MOA.

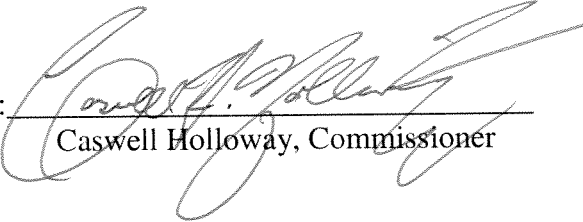
The Parties consent to the form and substance of the foregoing agreement.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: 
Joseph J. Martens, Commissioner

Dated: 4/21/11, 2011.


NEW YORK CITY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: 

Caswell Holloway, Commissioner

Dated: May 18, 2011.

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: 
Lawrence M. Levine, Senior Attorney

Dated: June 27, 2011.

AMERICAN LITTORAL SOCIETY, INC.

By: 

Tim Dillingham, Executive Director

Dated: 5/11/11, 2011.

JAMAICA BAY ECO WATCHERS

By: Dan Mundy
Dan Mundy Sr., President

Dated: 5/10, 2011.

RARITAN BAYKEEPER, INC., D/B/A NY/NJ BAYKEEPER

By: Deborah A. Mans
Deborah A. Mans, Executive Director

Dated: May 9, 2011.

APPENDIX A

TO BE PLACED IN THE SECTION ENTITLED “SCHEDULES OF COMPLIANCE” IN THE EXISTING SPDES PERMITS FOR THE JAMAICA BAY WPCPS, AS A NEW SUB-SECTION

BNR Upgrades

Action Code	Outfall Number(s)	Compliance Action	Due Date
	All	The Permittee shall commence operation of Level 2 BNR at the Jamaica WPCP [1, 5]	December 31, 2014
	All	The Permittee shall commence operation of Level 3 BNR at the 26 th Ward WPCP [2, 5]	December 31, 2015
	All	The Permittee shall complete construction of Level 1 BNR at the Rockaway WPCP [3, 4]	December 31, 2019
	All	The Permittee shall complete construction of Level 1 BNR at the Coney Island WPCP [3, 4]	December 31, 2020

[1] Level 2 BNR is defined to include, at minimum, in addition to the elements of Level 1: (1) upgrading the process air capacity based on the existing WPCP’s footprint; (2) upgrading the return activated sewage (“RAS”) system based on the existing WPCP’s footprint; (3) multiple lines of defense for froth control; and (4) Pass D wet weather controls in aeration tanks.

[2] Level 3 BNR is defined to include, at minimum, in addition to the elements of Level 2 BNR: (1) chemical addition including all appurtenances necessary to commence operation which will include construction of both supplemental carbon and alkalinity facilities; and (2) permanent separate sidestream centrate treatment.

[3] Level 1BNR is defined to include, at minimum: (1) construction of baffle walls in the aeration tanks; (2) installation of mixers in the anoxic zones; and (3) installation of froth control system(s).

[4] As used in the schedule of compliance for BNR upgrades, “complete construction” means that the process-related equipment and facilities are constructed in accordance with the approved plans and specifications, and are placed in operation to meet the applicable interim effluent limits. (Submission and approval of plans and specifications are governed by the terms of a consent judgment in *New York City Department of Environmental Protection, Christopher O. Ward, as Commissioner of the New York City Department of Environmental Protection, and the City of New York, Petitioners v. Erin M. Crotty, as Commissioner of the New York State Department of Environmental Conservation, and the New York State Department of Environmental Conservation*, Respondents, Index No. 04-402174 (Sup. Ct. N.Y.Cty.), entered **XXXXX**, 2011 (the “First Amended Nitrogen Consent Judgment”).

[5] As used in this schedule of compliance for BNR Upgrades, “commence operation” means that all the necessary treatment systems are placed in operation and being operated in accordance

with the DEC approved Preliminary BNR O&M Plans. The term does not mean “construction completion” as defined above. (Submission and approval of Preliminary O&M Plans are governed by the First Amended Nitrogen Consent Judgment.)

TO BE PLACED IN LIEU OF FN #1 IN THE SECTION ENTITLED “Jamaica Bay WPCPs (Jamaica, Rockaway, Coney Island, 26th Ward) No-Net Increase Effluent Limits and Monitoring for Nitrogen” IN THE EXISTING SPDES PERMITS FOR THE JAMAICA BAY WPCPS

1. Interim nitrogen effluent limits and a compliance schedule to meet the final nitrogen effluent limits for the Jamaica Bay WPCPs¹ are included in *New York City Department of Environmental Protection, Christopher O. Ward, as Commissioner of the New York City Department of Environmental Protection, and the City of New York, Petitioners v. Erin M. Crotty, as Commissioner of the New York State Department of Environmental Conservation, and the New York State Department of Environmental Conservation*, Respondents, Index No. 04-402174 (Sup. Ct. N.Y. Cty.), entered **XXXXX**, 2011 (the “First Amended Nitrogen Consent Judgment”), and are incorporated herein. The interim nitrogen effluent limits in the First Amended Nitrogen Consent Judgment and this SPDES Permit (“Performance-Based Limits”) are based on the actual future performance of the four Jamaica WPCPs, as described below in Paragraph 2. The interim nitrogen effluent limits are:

Table: Total Nitrogen – Interim Effluent Limits

Effective Date	Jamaica Bay Limits- These interim limits are step-down aggregate limits for all four Jamaica Bay WPCPs, expressed as a 12 month rolling average.
EDPM	41,600 lbs/day
January 1, 2012 (19 months after commencement of operation of the Level 2 upgrade at the 26th Ward WPCP on June 1, 2010).	Performance-Based Limit.
19 months after commencement of operation of the interim chemical addition facility for AT#3 at the 26 th Ward WPCP. ²	Performance-Based Limit. ³

¹ The four WPCPs discharging to Jamaica Bay are the Rockaway, Coney Island, Jamaica and 26th Ward WPCPs.

² The requirement to commence operation of the interim chemical addition facility is set forth in the First Amended Nitrogen Consent Judgment.

Effective Date	Jamaica Bay Limits- These interim limits are step-down aggregate limits for all four Jamaica Bay WPCPs, expressed as a 12 month rolling average.
19 months after the last of commencement of operation of: (a) the Level 3 BNR upgrades at the 26 th Ward WPCP, or (b) the Level 2 BNR upgrade at the Jamaica WPCP.	Performance-Based Limit. ⁴
19 months after the last of: (a) construction completion of the Level 1 BNR upgrade at Coney Island WPCP; or (b) construction completion of the Level 1 BNR upgrade at the Rockaway WPCP.	Performance-Based Limit. ⁵

2. Each Performance-Based Limit is a combined interim nitrogen effluent limit for all four WPCPs discharging to Jamaica Bay, expressed as a 12-month rolling average, and calculated except as otherwise noted in notes c, d, and e of this table, in accordance with the protocol set forth in Appendix D of the First Amended Nitrogen Consent Judgment and Exhibit A to this permit. Upon calculation by DEC of the numeric value of each Performance-Based Limit, DEC shall provide written notice to the Permittee of the results of such calculation. Such writing from DEC shall include a replacement permit page with the calculated Performance-Based Limit. This replacement page shall be automatically deemed as substituted into the permit in place of the existing page.

³ For purposes of applying the methodology in Exhibit A, results for the days when equipment that is critical for operation of the interim chemical addition facility for AT#3 is out of service, or when AT#1, AT#2 or AT#3 are out of service, shall not be included in the calculation of the 12-month rolling average for that month.

⁴ Applying the methodology in Exhibit A, performance data will be adjusted to incorporate any projected performance impacts due to ongoing or planned Level 1 BNR construction at the Coney Island and Rockaway WPCPs, if necessary.

⁵ To calculate the Performance-Based Limit, the 95th percentile value calculated pursuant to the methodology in Exhibit A shall be adjusted to account for the projected change in nitrogen discharges associated with projected population growth in each of the four Jamaica Bay drainage areas. These projected discharges will be calculated using the estimated populations five years after the completion of the performance evaluation period. The projected increases in the influent nitrogen loadings to each WPCP resulting from those population increases will be multiplied by the nitrogen removal efficiencies of each WPCP during the performance period to determine the anticipated increases in effluent nitrogen loadings. These projected effluent nitrogen increases due to projected population growth will be added by DEC to the interim effluent nitrogen limit calculated pursuant to the methodology in Exhibit A, to establish a Performance-Based Limit. DEP will provide the population growth data and removal efficiencies to DEC within 30 days of the end of performance period.

3. To assist DEC in calculating the Performance-Based Limits, 30 days prior to the calculation of each Performance-Based Limit, the Permittee will provide data to DEC identifying the volume of sludge and estimated total nitrogen concentration, and the volume of centrate and estimated total nitrogen concentration, generated by each of the four WPCPs discharging to Jamaica Bay. For the purposes of applying the methodology in Exhibit A to this Permit, performance data will be adjusted by subtracting the estimated increase in nitrogen discharges attributable to any volume of sludge and/or centrate that was treated by one of the four Jamaica Bay WPCPs, but generated anywhere other than one of those four WPCPs.

TO BE INSERTED AS “EXHIBIT A” TO THE EXISTING SPDES PERMITS FOR THE JAMAICA BAY WPCPs

Method for Calculating Performance-Based Combined Nitrogen Interim Effluent Limits for Jamaica Bay WPCPs

1. Upon commencement of operation of Level 2 BNR at the 26th Ward WPCP; commencement of operation of the interim chemical addition facility for AT#3 at the 26th Ward WPCP; commencement of operation of both Level 3 BNR at the 26th Ward WPCP and level 2 BNR at the Jamaica WPCP; and certification of construction completion of both level 1 BNR at the Rockaway and Coney Island WPCPs, respectively, the Permittee shall begin a 6-month startup operational period. After each such 6-month operational period, the Permittee shall undertake a 12-month performance evaluation to establish new interim nitrogen step-down limits.
2. The Permittee shall submit the performance data from the performance evaluation period to DEC within 30 days of the end of the 12-month performance period. DEC shall calculate Performance-Based Limits using the actual monthly aggregate total nitrogen loadings from the four Permittee facilities that discharge into the Jamaica Bay WPCPs, consistent with TOG 1.3.3. In calculating the Performance-Based Limits, DEC shall utilize the 95th percentile of the 12 data points collected during the period.¹ The 12 monthly data points shall represent each of the twelve months during the performance period.
3. The Permittee shall make best efforts in operating the WPCPs during the 6 month Operational and 12 month Performance Evaluation Periods (and while interim limits are in place).
4. DEC shall use its best professional judgment to assure that loading anomalies, due to the operation of the Jamaica dewatering facility or other loading variations, are not calculated into the Performance-Based Limits.

¹ The factors set forth in notes c, d, and e of Footnote 1 of the section of this permit entitled “Jamaica Bay WPCPs (Jamaica, Rockaway, Coney Island, 26th Ward) No-Net Increase Effluent Limits and Monitoring for Nitrogen” shall apply to this calculation.