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Jonathan A. Willens  
Edward Scarvalone

June 22, 2015

BY EMAIL

Tim Miller  
Tim Miller Associates, Inc.  
10 North Street  
Cold Spring, NY 10516

Re: Public Comments on the Proposed Annexation

We represent Kiryas Joel Poultry Processing Plant, Inc. (“KJ Poultry”), and submit these comments on KJ Poultry’s behalf in support of the proposed annexation to the Village of Kiryas Joel (“Village”).

**I. Factual Background.**

KJ Poultry is a privately-owned business located in the Village. It owns and operates the largest poultry plant in New York State, and is an important source of kosher chicken and turkey to the greater New York City metropolitan area and beyond. KJ Poultry sells to leading supermarkets, both kosher and non-kosher.

KJ Poultry is also a vital part of the Orange County local economy. The company is one of the largest private employers in the County. KJ Poultry employs over 250 people, almost all of whom are residents of the County. The great majority of its employees live outside the Village. These employees and their families, through their spending power, support local businesses throughout the County. So, too, does KJ Poultry, which obtains a significant amount of goods and services from the surrounding community, including contractors from all of the building trades: carpenters, electricians, plumbers, masons, *etc.*

**II. KJ Poultry’s Record of Environmental Compliance.**

Some of the public comments appear to assume that KJ Poultry is operated or controlled by the Village, and that any environmental compliance issues affecting the poultry plant must be the fault of the Village. This assumption is erroneous. The Village is not responsible for KJ Poultry’s conduct, any more than KJ Poultry is

responsible for the Village's. Nor does it make sense to argue that the Village has "allowed" KJ Poultry to violate the Clean Water Act, as some commenters have claimed, inasmuch as the state and federal environmental regulators (not municipalities) are generally responsible for enforcement of the Act.

In any event, the criticisms of KJ Poultry's environmental compliance record ignore the facts. KJ Poultry discharges its wastewater pursuant to a permit from the Orange County Department of Public Works. The wastewater is pre-treated before being discharged to the local sewage treatment plant. The pre-treatment process removes all of the solid material from the wastewater, and reduces the organic pollutants to levels prescribed by the discharge permit issued by the County. The wastewater, upon discharge to the sewage treatment plant, is combined with sanitary waste from Orange County Sewer District #1, and the combined waste stream receives additional treatment by the sewage treatment plant before being discharged.

Since 2011, KJ Poultry has been in complete compliance with its discharge permit. In November of that year, KJ Poultry completed construction of an upgraded state-of-the-art pretreatment facility, designed by an environmental engineering consultant based in Virginia that specializes in poultry plants. The pretreatment upgrade, which cost KJ Poultry approximately \$1 million in design and construction costs, has proven to be a complete success, as the plant's wastewater consistently meets permit limits. These efforts have been applauded by the New York State Department of Environmental Conservation (NYS-DEC) and the U.S. Environmental Protection Agency (EPA).

Also in 2011, KJ Poultry completed construction of an upgraded stormwater control system, which captures all of the stormwater from the plant's loading area and directs it to the pretreatment facility for treatment, rather than allowing it to run off into the Village's municipal stormwater system. This stormwater upgrade, too, has been a success.

In addition to making these important upgrades, KJ Poultry resolved a potential dispute with EPA about the alleged historical violations pre-dating the upgrades' implementation. The parties negotiated a consent decree in October 2014 that settled this potential dispute, with KJ Poultry agreeing to pay an agreed-upon amount of civil penalties (\$330,000). The consent decree (a copy of which is attached) makes clear that the violations in question are past violations, and concern conditions that were remedied by the 2011 upgrades. *See* Consent Decree, ¶ 9.<sup>1</sup>

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<sup>1</sup> Thus, the consent decree's mention of instances when KJ Poultry's wastewater allegedly caused the sewage treatment plant to violate its permit states that these instances occurred "[a]t various

It is hardly uncommon for food processors to negotiate environmental settlements with government regulators. Food processing, by its very nature, yields wastewater containing organic pollutants, which – while not as harmful as other pollutants – must nonetheless be treated before discharge to the local sewage treatment plant. Wastewater from food processing is therefore subject to rigorous permitting from local authorities. Exceedances of permit limits sometimes occur, even by companies much larger than KJ Poultry. For example, Empire Kosher Poultry and Washington Beef have been the subject of recent environmental enforcement efforts involving the payment of significant civil penalties.<sup>2</sup>

The hallmark of a responsible company, however, is fixing the technical problems that gave rise to the environmental compliance concerns, and then resolving potential litigation with the environmental regulators. KJ Poultry has accomplished both of these goals – both through the 2011 upgrades described above, *see* page 2, and the 2014 consent decree with EPA. Going forward, KJ Poultry will continue to discuss issues of potential concern with the environmental regulators, whether EPA or NYS-DEC, and make additional investments in compliance technology where appropriate.<sup>3</sup>

Finally, the facts demonstrate KJ Poultry's commitment to conservation and recycling of resources. The company has reduced its water consumption and its wastewater by 40% – from approximately 250,000 gallons-per-day to 150,000 gallons-per-day – through a series of extensive (and expensive) plumbing improvements. As a consequence, KJ Poultry is not only saving 100,000 gallons-per-day in water usage each operational day, but has also decreased the amount of wastewater that it sends to the local sewage treatment plant – effectively reducing, by 100,000 gallons-per-day, the sewage loading of Orange County Sewer District #1. This improvement should be duly considered as part of your SEQRA analysis of potential water and sewer impacts.<sup>4</sup>

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<sup>2</sup> In June 2013, Empire Kosher Poultry entered into an agreement with Pennsylvania's Department of Environmental Protection to pay \$99,000 in civil penalties to resolve Clean Water Act violations dating back to 2008. *See* <http://www.haaretz.com/jewish-world/jewish-world-news/1.528693>. In May 2010, Washington Beef entered into a consent decree with the U.S. Justice Department and EPA to pay a \$750,000 civil penalty and install treatment equipment estimated to cost approximately \$3,000,000. *See* <http://www.justice.gov/opa/pr/washington-state-slaughterhouse-operator-agrees-resolve-clean-water-act-permit-violations>.


<sup>3</sup> All told, KJ Poultry has invested more than \$2.5 million in environmental improvements and mitigation measures since 2008. This expenditure is in addition to the cost of retaining an environmental engineering consultant and hiring a full-time compliance manager.

<sup>4</sup> We are unaware of any water consumer or wastewater discharger in Orange County that can boast of a comparable 40% reduction.

**III. KJ Poultry Supports the Proposed Annexation.**

The proposed annexation will enable the Village to continue to grow in a smart, responsible way, by incorporating the new acreage into the Village sewer system and road system. This type of smart growth, in turn, will help the County at large, and also help KJ Poultry's customers and employees – both those who live in the Town of Monroe, and those who live elsewhere in Orange County. KJ Poultry therefore supports the annexation.

Sincerely yours,

A handwritten signature in cursive script that reads "Ed Scarvalone".

Edward Scarvalone

Encl.

CL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

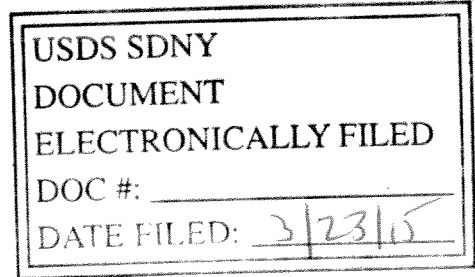
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UNITED STATES OF AMERICA,

Plaintiff,

v.

KIRYAS JOEL POULTRY PROCESSING  
PLANT, INC., and KIRYAS JOEL MEAT MARKET  
CORP.,

Defendants.  
----- X



14 Civ. 8458 (VB)

**CONSENT DECREE**

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## I. INTRODUCTION

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this action concurrently with this Consent Decree, alleging that Defendants Kiryas Joel Poultry Processing Plant, Inc. ("KJPPP") and Kiryas Joel Meat Market, Inc. ("KJMM" and collectively, "Defendants") violated Sections 301, 307, and 402 of the Clean Water Act ("Act"), 33 U.S.C. §§ 1311, 1317, and 1342;

WHEREAS, the Complaint alleges that at various times, Defendants violated the Act, 33 U.S.C. §§ 1311, 1342(p) and 1317(b), as amended, by: (1) allowing KJPPP's pretreatment facility to overflow into storm drains and subsequently into waters of the United States in violation of 33 U.S.C. § 1311; (2) KJPPP's failure to timely implement a Storm Water Pollution Prevention Plan and allowing stormwater with pollutants to discharge to storm drains in violation of 33 U.S.C. § 1342(p); and (3) KJPPP's violation of the pretreatment regulations promulgated pursuant to 33 U.S.C. § 1317(b) by causing interference with and pass-through of the Village of Kiryas Joel Publicly Owned Treatment Plant ("POTW");

WHEREAS, on or about August 5, 2010, EPA issued KJPPP an Administrative Order, Docket No. CWA 02-2010-3046 ("Administrative Order"), requiring KJPPP to address these allegations, and KJPPP subsequently did so, albeit untimely, by constructing stormwater design improvements and an upgraded pretreatment facility, as well as implementing a Storm Water Pollution Prevention Plan; and

WHEREAS, Plaintiff and Defendants (collectively "the Parties") recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

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

## II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and over the subject matter of this action, pursuant to 28 U.S.C. § 1345, and Sections 309(b), 309(f) and 307(d) of the Act, 33 U.S.C. §§ 1319(b), 1319(f), 1317(d). Venue lies in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), as well as Section 309(b) of the Act, 33 U.S.C. § 1319(b), because this district is the judicial district in which Defendants are located, reside, and are doing business, and in which the violations alleged in the Complaint occurred. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

3. Notice of the commencement of this action has been given to the State pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b).

### III. APPLICABILITY

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

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Consent Decree are implemented. At least 30 days prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 2, the United States Attorney for the Southern District of New York, and the United States Department of Justice, in accordance with Section XV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

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

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

### IV. DEFINITIONS

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

“Administrative Order” means the EPA Administrative Order, Docket Number CWA-02-2010-3046, dated August 5, 2010;

“Calendar Quarter” means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31;



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

“Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIV);

“Business Day” shall mean a calendar day other than a Saturday, Sunday, a federal holiday, or a Religious Holiday;

“Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, federal holiday, or Religious Holiday, the period shall run until 5 p.m. of the next Business Day;

“Defendants” shall mean KJPPP and KJMM;

“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 XVI;

“Facility” shall mean the Poultry Plant and Pretreatment Facility (as those terms are defined herein) collectively;

“Interference” shall mean the definition set forth in 40 C.F.R. § 403.3(k), or as amended;

“IU Permit” shall mean the industrial user permit previously issued by Orange County, on or about July 9, 2009 and bearing the effective date of June 15, 2009, and attached to this Consent Decree as Appendix A, and any subsequent industrial user permits that become legally in effect;

“MS4” shall mean the Village of Kiryas Joel’s Municipal Separate Storm Sewer;

“MSGP” shall mean the NYSDEC SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity;

“NYSDEC” shall mean the New York State Department of Environmental Conservation;

“Orange County” shall mean the Orange County Department of Public Works – Division of Environmental Facilities & Services;

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

“Pass Through” shall mean the definition set forth in 40 C.F.R. § 403.3(p), or as amended;

“Pass-Through or Interference Event” shall mean a specific condition or circumstance at KJPPP that is a cause of Pass Through and Interference at the POTW;

“Parties” shall mean the United States and Defendants;

“Poultry Plant” shall mean the Kiryas Joel Poultry Processing Plant, located at 7 Dinev Court, Monroe, New York;

“POTW” shall mean the Village of Kiryas Joel Publicly Owned Treatment Plant;

“Pretreatment Facility” shall mean the Kiryas Joel Poultry Processing Plant’s wastewater pretreatment facility, located off Bakertown Road, Monroe, New York;

“Religious Holiday” shall mean the holidays and dates set forth in the attached Appendix B of this Consent Decree;

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

“SPDES” shall mean the State Pollutant Discharge Elimination System;

“State” shall mean the State of New York;

“Unauthorized Discharge” shall mean any discharge to the MS4 or to the waters of the United States that is not authorized by Part I.C.3 (Non-Stormwater Discharges) of the 2012 MSGP GP-0-12-001, and any amendments thereto; and

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

## V. ADMISSIONS

9. Defendants admit, acknowledge, and accept responsibility for the following conduct alleged in the Complaint:

a. At various times between September 2008 and March 2010, and again on March 18, 2012, the Defendants took inadequate steps to prevent spills of untreated wastewater from the KJPPP’s pretreatment facility, located off Bakertown Road, from overflowing into storm drains that discharged to waters of the United States.

b. From at least August 2007 to the present, activities conducted by Defendants at the Poultry Plant have included poultry slaughtering and processing operations regulated by Sector U of the MSGP, promulgated by the State of New York.

c. As dischargers of stormwater associated with industrial activity, Defendants were required to apply for an individual permit or seek coverage under a promulgated stormwater general permit under 40 C.F.R. §§ 122.26(a)(1)(ii), (b)(14), and (c)(1). From

at least 2008 until May 1, 2011, Defendants failed to obtain coverage under the stormwater general permit and, at various times, took inadequate steps to prevent stormwater associated with their industrial activities from discharging into storm drains and storm sewers that ultimately discharged to waters of the United States.

d. At various times between January 2008 and April 2011, Defendants discharged wastewater containing excess concentrations of pollutants, known as Carbonaceous Biochemical Oxygen Demand, Total Suspended Solids, and Fats, Oils, and Grease, into the Kiryas Joel POTW that were a cause of the POTW violating its Clean Water Act permit.

## VI. CIVIL PENALTY

10. Defendants shall pay the principal amount of \$330,000 as a civil penalty. Payment of the principal amount shall be made in three installments.

- a. The first installment payment of \$165,000 is due within 30 days after the Effective Date and, if timely paid, shall include no interest.
- b. The second and third installment payments of \$82,500 each are due within 90 and 150 days after the Effective Date and shall also include an additional sum for interest at the rate specified in 28 U.S.C. § 1961 for the unpaid portion of the principal amount calculated from the first day after the Effective Date until the date of the payment. The Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Southern District of New York shall send a calculation of the interest due for each payment to Defendants.
- c. Defendants may pay any installment payment prior to the due date, but must contact the FLU in advance for a determination regarding the amount of accrued interest to be included with the payment. In the event any installment payment includes an overpayment, the amount of the overpayment shall be applied to the remaining principal.

11. Payment of the civil penalty in Paragraph 10 by Defendants shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Defendants by the FLU after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

Chaim Oberlander  
Kiryas Joel Poultry Processing Plant, Inc.  
P.O. Box 596  
Monroe, New York 10949  
Tel.: (845) 783-8085  
Email: [chaim@kjpoultry.com](mailto:chaim@kjpoultry.com)

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

12. At the time of payment, Defendants shall send notice that payment has been made to EPA in accordance with Section XV (Notices), and by email to EPA and DOJ at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov) and [EESCaseManagement.ENRD@usdoj.gov](mailto:EESCaseManagement.ENRD@usdoj.gov), or by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Tomoko Onozawa  
Assistant United States Attorney  
United States Attorney's Office, Southern District of New York  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, NY 10007

Chief, Water Compliance Branch  
EPA Region 2, DECA-WCB  
290 Broadway, 20th Floor  
New York, NY 10007

EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, DC 20044-7611  
Re: DJ No. 90-5-1-1-10219

13. Such notice shall reference the CDCS Number, and DJ Ref. #90-5-1-1-10219.

14. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating their federal income tax.

## VII. COMPLIANCE AND MITIGATION REQUIREMENTS

15. Except as specifically provided, nothing in this Consent Decree limits Defendants' obligations to comply with all applicable federal and state laws and regulations.

16. KJPPP having certified to the contacts listed in Section XV (Notices) for the United States Attorney's Office and for EPA that it has ceased unauthorized discharges to the MS4 and waters of the United States, and certified that untreated discharges to the POTW have ceased, the Administrative Order is hereby terminated. The monitoring, reporting, and injunctive obligations under the Administrative Order are superseded by Section VII of this Consent Decree.

17. High Level Alarms.

a. KJPPP shall, within 90 days of the Effective Date, modify the Programmable Logic Controller (“PLC”) for the level sensor in the equalization tank to trigger a high level alarm for the equalization tank that will alert the pretreatment plant operator and a manager at KJPPP when the equalization tank level is nearing an overflow condition (*e.g.*, when the water level reaches within two feet of the bottom of the overflow pipe). KJPPP also shall modify the PLC to alert the operator and the manager when the equalization tank reaches an overflow condition (*e.g.*, when the equalization tank exceeds the overflow elevation), and to provide a status indication of when the level decreases below the overflow level. KJPPP shall submit a written certification to EPA once it has completed the requirements of this Paragraph.

b. KJPPP shall, within 90 days of the Effective Date, and continuing for one year, record every instance that the emergency overflow at the top of the equalization tank is active and the period of time that it is active.

c. KJPPP shall, within 90 days of the Effective Date, submit written certification to EPA that all process wastewater flows from KJPPP are being treated in the dissolved air flotation (“DAF”) unit and that all process wastewater flows are being monitored in accordance with the IU Permit.

18. Pretreatment Compliance Monitoring. KJPPP shall monitor its pretreatment compliance for a full year starting with the third full month after the Effective Date. KJPPP shall include monitoring data regarding pretreatment compliance in the monthly Pretreatment Compliance Report as provided under Paragraph 37.

19. Calibration. KJPPP shall calibrate all effluent flow monitoring equipment and level sensors as needed, but no less frequently than once per year, beginning with KJPPP’s most recent calibration, which was done on November 9, 2013.

20. Sanitary Wastewater Flow Monitoring. During the time period covered by Paragraph 18, KJPPP shall monitor and record sanitary wastewater flows from the Facility to the POTW on a daily basis. This can be accomplished by recording sanitary pump run times for the entire day and nominal pump capacities. The sanitary flow rate estimate should be included in the table contained in the monthly Pretreatment Compliance Report required under Paragraph 37.

21. DAF Sludge Monitoring. During the time period covered by Paragraph 18, KJPPP shall measure the volume or height of the DAF sludge in its storage tanks on a daily basis. KJPPP shall include this information, together with the maximum storage volume and/or maximum sludge height in the sludge tanks, in the monthly Pretreatment Compliance Report required under Paragraph 37.

22. Enhanced Monitoring. Beginning the first full month following the Effective Date, KJPPP shall monitor and record the Pretreatment Facility’s effluent four days per week



from Monday through Thursday (“Four Day Monitoring”) regarding the following parameters: Fats Oil and Grease (“FOG”), Five Day Carbonaceous Biochemical Oxygen Demand (“CBOD5”), Total Suspended Solids (“TSS”), pH, Ammonia-Nitrogen and Total Dissolved Solids (“TDS”). CBOD5, TSS, Ammonia-Nitrogen and TDS shall be taken by composite sample, and pH and FOG shall be taken as a grab sample. All monitoring, preservation and analysis shall be performed in accordance with 40 C.F.R. Part 136. The Four Day Monitoring shall be conducted for four weeks. If, after this four-week period, sampling results from the Enhanced Monitoring reflect any exceedances of the maximum concentration limits for FOG, CBOD5, TSS, and maximum or minimum pH in the IU Permit, then KJPPP shall conduct Four Day Monitoring for a new four-week period. If there are no exceedances of the above-referenced pretreatment permit limits in the IU Permit during this four-week period, then the sampling frequency can be reduced to once per week. KJPPP’s obligation to conduct once-per-week sampling shall not be suspended during any week consisting of Religious Holidays, as shown in Appendix B, where at least one of those Religious Holidays constitutes a day on which KJPPP discharges water. All monitoring data required by this Paragraph shall be included with the monthly Pretreatment Compliance Report required under Paragraph 37.

23. Corrective Action Plan of Action. Regardless of whether Enhanced Monitoring is or is not being performed, if there are three or more Pass-Through or Interference Events that (a) are similar in nature or share a common origin, (b) occur within 90 days of each other, and (c) do not solely involve chlorides or TDS, then KJPPP shall submit to EPA, within 60 days of KJPPP’s receipt of EPA notification that Pass-Through or Interference Events satisfying the foregoing conditions (a)–(c) have occurred, a Corrective Action Plan of Action (“POA”) that sets forth measure(s) to prevent these Pass-Through or Interference Events from occurring. The Corrective Action POA must also include a schedule for implementing the selected measure(s), which shall not exceed 120 days from the date the Corrective Action POA becomes “final” within the meaning of Paragraph 34 below. EPA, with a 30-day opportunity for comment by NYSDEC, Orange County and the Village of Kiryas Joel, shall endeavor, within 45 days of receipt of the Corrective Action POA, to comment on and request modifications to the POA. Approval and acceptance of the Corrective Action POA shall be subject to the procedures set forth in Paragraphs 30 to 34 below. Provided, however, that if a single Pass-Through or Interference Event results in two or more consecutive weeks of Pass Through and Interference violations that do not solely involve chlorides or TDS, then that single Pass-Through or Interference Event shall be deemed to satisfy the foregoing conditions (a)–(c), and KJPPP shall submit to EPA, within 60 days of KJPPP’s receipt of EPA notification that this Pass-Through or Interference Event has occurred, a POA to prevent this Pass-Through or Interference Event from occurring.

24. POA Completion Report. No later than 120 days after the deadline for completion of the measures set forth in the Corrective Action POA that is accepted and approved by EPA pursuant to the prior Paragraph (“Final Corrective Action POA”), KJPPP shall submit to EPA a Corrective Action POA Completion Report that describes in detail: (i) all of the measures in the Final Corrective Action POA that KJPPP implemented; (ii) all failures, if any, by KJPPP to fully implement any measures in the Final Corrective Action POA and the reason(s) for such failures; and (iii) all failures, if any, by KJPPP to prevent the Pass-Through or Interference

Event(s) from occurring, since the time KJPPP commenced implementing the measures set forth in the Final Corrective Action POA, and the reasons for such failures.

25. Regardless of whether Enhanced Monitoring is or is not being performed, if, at any time after completion of the requirements of the Final Corrective Action POA, there are three or more Pass-Through or Interference Events that (a) are similar in nature or share a common origin, (b) occur within 90 days of each other, and (c) do not solely involve chlorides or TDS, then KJPPP shall submit, within 60 days of KJPPP's receipt of EPA notification that Pass-Through or Interference Events satisfying the foregoing conditions (a)-(c) have occurred, an amended Corrective Action POA to address these events. Provided, however, that if a single Pass-Through or Interference Event results in two or more consecutive weeks of Pass Through and Interference violations that do not solely involve chlorides or TDS, then that single Pass-Through or Interference Event shall be deemed to satisfy the foregoing conditions (a)-(c), and KJPPP shall submit to EPA, within 60 days of KJPPP's receipt of EPA notification that this Pass-Through or Interference Event has occurred, an amended POA to prevent this Pass-Through or Interference Event from occurring. The approval of, implementation of, reporting on, and further amendment of such amended Corrective Action POA shall be governed by Paragraphs 23 and 24.

26. Emergency Storage and Emergency Plant Shutdown. Within 90 days of the Effective Date, KJPPP shall submit an emergency operation plan that describes proposed actions to be implemented in the event of a breakdown or failure of any equipment used for treating the Poultry Plant's wastewater (e.g., rotating screens, equalization tank, dissolved air flotation unit, sludge storage tanks, pumps, etc.) and that are designed to prevent violations of the Facility's IU Permit.

a. The emergency operation plan shall include plans and procedures intended, in the event of any failure of any wastewater treatment equipment, to prevent the discharge of wastewater (i) that may cause Pass-Through and/or Interference at the POTW; (ii) into the MS4; and (iii) into navigable waters of the United States.

b. The emergency operation plan shall include plans and a proposed schedule to increase emergency storage capacity at the Facility, if necessary, so that there is sufficient emergency storage capacity to capture 90 minutes' worth of process wastewater flow.

27. The emergency operation plan also must provide that, if either the equalization tank or the emergency storage capacity becomes full, then KJPPP shall immediately cease all operations at the Poultry Plant that generate wastewater and shall not resume such operations until the problem or failure that caused the emergency has been corrected and storage capacity exists to capture 90 minutes' worth of process wastewater flow.

28. Total Dissolved Solids. Within 30 days after the Effective Date, KJPPP shall submit a written certification that the new salt dispensing machine has been installed and has commenced operation as of June 2013 which, in conjunction with other efforts, has reduced salt usage and TDS loadings from KJPPP to the POTW by approximately 20%, compared to average

TDS loadings (pounds per day) from KJPPP to the POTW that were recorded during calendar year 2012.

29. Compliance with MSGP.

a. KJPPP shall, within 60 days of the Effective Date, submit to EPA and to the Village of Kiryas Joel a Stormwater Plan of Action ("Stormwater POA") that: (i) identifies all of the catch basins in the vicinity of KJPPP that receive stormwater, washdown water, and/or any other non-allowable non-stormwater (see Parts I.C.3 and III.E of the MSGP) from the Facility; and (ii) sets forth a plan to eliminate all non-allowable non-stormwater discharges from its Facility into the catch basins, into the MS4, and into any surface waters.

b. KJPPP shall conduct weekly visual and odor inspections of the catch basins identified in Paragraph 29(a) to determine whether non-allowable non-stormwater is entering the catch basins. If KJPPP determines that non-allowable non-stormwater from the Facility is entering the MS4 through the catch basins, then KJPPP shall immediately take steps to prevent the non-allowable non-stormwater from entering the catch basins, and shall, within 15 days, submit written notification to EPA and the Village of Kiryas Joel. The written notification shall include the source of the non-allowable non-stormwater, measures that have been taken or that will be taken, a schedule for eliminating and preventing recurrence of the non-allowable non-stormwater discharge, and the date that the non-allowable non-stormwater discharge ceased.

c. According to Part 3.7 of KJPPP's April 27, 2011 Stormwater Pollution Prevention Plan ("SWPPP"), truck loading and staging of trucks is to be conducted within KJPPP's perimeter drain, an area that collects and diverts water to its Pretreatment Facility. Within 60 days of the Effective Date, KJPPP shall submit to EPA a modified SWPPP to include Stormwater Best Management Practices for any truck parking/staging areas located outside of the KJPPP perimeter drain. The SWPPP modification shall also include the weekly catch basin inspections required under Paragraph 29(b). Commencing within 60 days of the Effective Date, all truck loading and staging of trucks will be within areas designated in the SWPPP, and all Stormwater Best Management Practices will be in place and properly operated and maintained.

d. Within 60 days of the Effective Date, KJPPP shall submit to EPA a written certification of its compliance with the MSGP and with the requirements of Paragraph 29.

30. Approval/Acceptance of Deliverables. After review of the POAs that are required to be submitted for EPA approval pursuant to Paragraphs 23, 25, and 29(a) of this Consent Decree, EPA shall in writing: (i) approve or accept the submission; (ii) approve or accept the submission upon specified conditions; (iii) approve or accept part of the submission and disapprove the remainder; or (iv) disapprove the submission.



31. If the submission is approved or accepted, KJPPP shall take all actions required by the POA, in accordance with the schedules and requirements of the POA, as approved or accepted by EPA. If the submission is conditionally approved or accepted or approved or accepted only in part, KJPPP shall, upon written direction from EPA, take all actions required by the POA that EPA determines are technically severable from any disapproved portions.

32. If the submission is disapproved in whole or in part, KJPPP shall, within 30 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the POA, or disapproved portion thereof, for approval or acceptance. If the resubmission is approved or accepted in whole or in part, KJPPP shall proceed in accordance with Paragraph 31.

33. If a resubmitted POA, or portion thereof, is disapproved in whole or in part, EPA may again require KJPPP to correct any deficiencies, in accordance with the preceding Paragraphs 30 to 32, subject to KJPPP's right to invoke the dispute resolution provisions of Section XI.

34. Upon approval or acceptance of a POA that is required to be submitted for EPA approval pursuant to Paragraphs 23, 25, and 29(a) of this Consent Decree or upon a final determination regarding the POA under the dispute resolution provisions of Section XI, the POA will be deemed "final," and shall be deemed to be incorporated into, and shall become a requirement of this Consent Decree.

35. Permits. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section X (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

36. KJMM shall make reasonable efforts to facilitate KJPPP's compliance with its obligations under this Consent Decree.

## VIII. REPORTING REQUIREMENTS

37. Monthly Reports. KJPPP shall continue to submit monthly reports regarding its pretreatment compliance ("Pretreatment Compliance Report"). These monthly reports shall be due by the 28th day after the end of the month covered by the report. Beginning with the month commencing after the Effective Date and until the termination of the particular monitoring requirement or termination date of this Consent Decree, whichever is earlier, each Pretreatment Compliance Report shall include a table that shows daily water usage based on the daily influent potable water flows from the water utility's two water meters, the daily effluent flow rate (i.e., flow gallons per day) from the normal equalization tank flows to the DAF unit, the dates and time periods (if any) when the equalization tank is overflowing, the daily flow rate from the Pretreatment Facility to the POTW, the daily sludge disposal volume, and the daily sanitary flow

rate. The table shall be submitted to EPA on an electronic spreadsheet (e.g., Microsoft Excel) sent via electronic mail or digital media (CD or DVD).

38. Quarterly Reports. Not later than 30 days after the end of each Calendar Quarter after the Effective Date, until the termination date of the Consent Decree, KJPPP shall submit to EPA a Quarterly Report for the preceding Calendar Quarter that shall include, at a minimum:

- a. A description of the status of all activities/measures being implemented under any POA that has not been completed;
- b. Visual monitoring records, routine facility inspection reports, and annual report required by the MSGP. The annual report need only be included with the quarterly report in the quarter that it is due, not with every quarterly report submitted; and
- c. A description of the actions taken by KJPPP to comply with the Compliance and Mitigation Requirements provisions above, as well as a description of any non-compliance with any requirement of the Compliance and Mitigation Requirements provisions above, and an explanation of the non-compliance's likely cause and the remedial steps taken, or to be taken, to minimize such violation, or to prevent future non-compliance. If the cause of the non-compliance cannot be fully explained at the time the Quarterly Report is due, KJPPP shall so state in its Quarterly Report. KJPPP shall investigate the cause of the non-compliance and shall submit an amendment to the Quarterly Report, including a full explanation of the cause of the non-compliance, within 30 days of the date KJPPP determines the cause of the non-compliance.

If the first Calendar Quarter after the Effective Date consists of 30 days or less, the Quarterly Report for that Calendar Quarter shall not be required, and the information will be included in the next Quarterly Report.

39. Waste Disposal Reporting. During the time period covered by Paragraph 18, KJPPP shall submit to EPA, at the same time as the monthly Pretreatment Compliance Report required under Paragraph 37, the information required by Part K, Waste Material Disposal, of the IU Permit, and shall also maintain in its files copies of all manifests for sludge disposal that include the signatures of the transporter and that list the final destination for sludge disposal. KJPPP shall provide EPA with copies of these manifests within two weeks upon request. After the time period covered by Paragraph 18, KJPPP shall submit the waste material disposal information required by Part K (or as amended in a subsequent IU Permit in effect) to EPA simultaneously with its submissions to Orange County, until the termination of this Consent Decree.

40. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendants' performance under this Decree, or the performance of their Facility, may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify EPA orally or by e-mail or facsimile transmission as soon as possible, but no later than 24 hours after Defendants first knew of the violation or event.

41. If Defendants violate, or have reason to believe that they may violate, any requirement of this Consent Decree, Defendants shall notify the United States and EPA and the State of such violation and its likely duration, in writing, within 10 days of the day Defendants first become aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendants shall so state in the report. Defendants shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendants become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of their obligation to provide any other notice or report required by this Consent Decree, including but not limited to the notice required by Section X (Force Majeure).

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

43. Each notice or report submitted by Defendants under this Section, other than emergency or similar notifications where compliance would be impractical, shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

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

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

46. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree,

according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Decree.

47. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required to be paid under Paragraph 10 of this Decree (Civil Penalty) when due, Defendants shall pay a stipulated penalty of \$500 per Day for each Day that the payment is late.

48. The following stipulated penalties shall accrue per violation per Day for each Pass-Through or Interference Event, with the exception of chlorides and/or TDS:

Penalty per violation per day	Period of non-compliance
\$750	1st Pass-Through or Interference Event
\$1,000	2 <sup>nd</sup> Pass-Through or Interference Event
\$1,500	3rd and subsequent Pass-Through or Interference Event

49. The following stipulated penalties shall accrue per violation per Day for each Unauthorized Discharge from Defendants' Facility

Penalty per violation per day	Period of non-compliance
\$1,000	1st Unauthorized Discharge
\$1,500	2 <sup>nd</sup> Unauthorized Discharge
\$2,000	3rd and subsequent Unauthorized Discharge

50. Compliance Milestones. The following stipulated penalties shall accrue per violation per Day for each violation of the compliance and certification milestones, including: the submission of any required POAs and written certifications to EPA; the implementation of all measures and meeting of all deadlines set forth in approved POAs; the submission of POA completion reports; the submission of an emergency operation plan; and the submission of a modified SWPPP, as identified in Paragraphs 17, 23, 24, 25, 26, 29(a), 29(c), and 29(d).

Penalty per violation per day	Period of non-compliance
\$250 per Day or portion thereof	1st through 30th day
\$500 per Day or portion thereof	31st through 60th day
\$750 per Day or portion thereof	61 <sup>st</sup> day and beyond

51. Daily Monitoring and Reporting Requirements. Beginning with the second such violation, the following stipulated penalties shall accrue per violation per Day for each of the daily monitoring and reporting requirements under Paragraphs 18, 20, and 21.

Penalty per violation per day	Period of non-compliance
\$100 per Day or portion thereof	1st through 30th day
\$200 per Day or portion thereof	31 <sup>st</sup> through 60th day
\$300 per Day or portion thereof	61 <sup>st</sup> day and beyond

52. Enhanced Monitoring, Inspection, and Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each of the enhanced monitoring, inspection and reporting requirements under Paragraphs 22, 29(b), 37, 38, and 39.

Penalty per violation per day	Period of non-compliance
\$100 per Day or portion thereof	1st through 30th day
\$200 per Day or portion thereof	31 <sup>st</sup> through 60th day
\$300 per Day or portion thereof	61 <sup>st</sup> day and beyond

53. Except as set forth in Paragraph 51, 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 Decree.

54. Defendants shall pay each stipulated penalty within 30 days of receiving the United States' written demand for that penalty, subject to the provisions of Paragraph 56.

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

56. Stipulated penalties shall continue to accrue as provided in Paragraph 53 during any dispute resolution under Section XI, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be



owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Paragraph 56(c).

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

57. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 12, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state the violation(s) for which the penalties are being paid.

58. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants 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 Defendants' failure to pay any stipulated penalties.

59. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant statutory or regulatory requirements, Defendants shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

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

60. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants 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 Defendants' financial inability to perform any obligation under this Consent Decree.

61. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice orally or by electronic or facsimile transmission to EPA, within five days of when Defendants knew that the event might cause a delay. Within seven days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' 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 Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants 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 Defendants 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. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

62. 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 Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

63. 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 Defendants in writing of its decision.

64. If Defendants elect to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendants 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 Defendants complied with the requirements of Paragraphs 60 and 61. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

65. If Defendants do not invoke the dispute resolution procedures set forth in Section XI within 15 days after receipt of EPA's notice, EPA's decision that the delay or anticipated delay has not been or will not be caused by a force majeure event is binding and unreviewable in Court or otherwise.

## **XI. DISPUTE RESOLUTION**

66. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Consent Decree, provided that Defendants had notice of such issue and an opportunity to raise the issue, but did not raise the issue during the formal dispute resolution phase described in Paragraph 68.

67. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. A dispute under this Consent Decree is initiated when: (1) the United States sends Defendants a written Notice of Dispute; or (2) Defendants send 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 of the Notice of Dispute, unless that period is modified by written agreement. If the dispute is resolved, the Parties shall sign a statement setting forth the resolution of the dispute, which will be binding. If the dispute is not resolved, then the position advanced by the United States shall be considered binding unless, within 21 days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

68. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States 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 Defendants' position and any supporting documentation relied upon by Defendants.

69. The United States shall serve its Statement of Position within 45 days of receipt of Defendants' 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 Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

70. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within twenty-one days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

71. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules of this Court.

72. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 70, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law. Defendants reserve the right to argue that their position is based on a reasonable interpretation of a statute, regulation, or permit, or a reasonable interpretation of this Consent Decree, and that the United States' litigation position is not entitled to deference.



73. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 56. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

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

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

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Decree.

75. Upon request, Defendants shall provide EPA or its authorized representatives splits of any samples taken by Defendants. Upon request, EPA shall provide Defendants splits of any samples taken by EPA.

76. Until five years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their 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 their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of their obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

77. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants 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, Defendants shall deliver any such documents, records, or other information to EPA. Defendants 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 Defendants assert such a privilege, they 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 Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

78. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

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

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

80. This Consent Decree resolves:

- a. the civil claims of the United States for the violations alleged in the Complaint through the date of lodging; and
- b. civil claims that could have been brought against the Defendants by the United States pursuant to Sections 307 or 309 of the Act for (i) noncompliance with the Administrative Order, or (ii) Pass-Through or Interference violations occurring through the date of lodging.

81. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 80. This Consent Decree 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 80. Additionally, notwithstanding Paragraph 80, the United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' Facility, whether related to the violations addressed in this Consent Decree or otherwise.

82. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, and/or other appropriate relief, Defendants 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 80.

83. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree 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 Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1251-1387, or with any other provisions of federal, State, or local laws, regulations, or permits.

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

85. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

#### **XIV. COSTS**

86. 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 Defendants.

#### **XV. NOTICES**

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

To the United States: Tomoko Onozawa  
Assistant U.S. Attorney  
U.S. Attorney's Office, Southern District of New York  
86 Chambers Street, 3rd Floor  
New York, New York 10007

and eescasemanagement.enrd@usdoj.gov  
Re: DJ # 90-5-1-1-10219

or EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-10219

EPA contact: Chief, Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. EPA Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007  
Phone: (212) 637-4244  
Fax: (212) 637-3953

and Chief, Water and General Law Branch  
Office of Regional Counsel  
U.S. EPA Region 2  
290 Broadway, 16th Floor  
New York, New York 10007  
Phone: (212) 637-3232  
Fax: (212) 637-3202

To Defendants: Edward Scarvalone  
Doar Rieck Kaley & Mack  
217 Broadway  
New York, New York 10007

Chaim Oberlander  
Kiryas Joel Poultry Processing Plant, Inc.  
P.O. Box 596  
Monroe, New York 10949

88. Unless otherwise specified herein, whenever notifications, submissions, reports, or communications are required by this Consent Decree by email, they shall be made to EPA through [mckenna.douglas@epa.gov](mailto:mckenna.douglas@epa.gov), [fischer.lauren@epa.gov](mailto:fischer.lauren@epa.gov), and [lantner.murray@epa.gov](mailto:lantner.murray@epa.gov); to the United States through [tomoko.onozawa@usdoj.gov](mailto:tomoko.onozawa@usdoj.gov); and to Defendants through [EScarvalone@doarlaw.com](mailto:EScarvalone@doarlaw.com).

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

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

#### **XVI. EFFECTIVE DATE**

91. The Effective Date of this Consent Decree shall be the date upon which the approval of this Consent Decree is recorded on the Court's docket; provided, however, that Defendants hereby agree they shall be bound to perform duties scheduled to occur prior to the Effective Date to the extent provided by this Consent Decree. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

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

92. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XI and XVIII, or effectuating or enforcing compliance with the terms of this Decree.

#### **XVIII. MODIFICATION**

93. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court. The terms and schedules contained in Paragraphs 17-29, and 37-39 of this Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects the Defendants' ability to meet the requirements or objectives of this Decree.

94. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution); provided, however, that instead of the burden of proof provided by Paragraph 72, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### **XIX. TERMINATION**

95. After Defendants have completed the requirements of Section VII (Compliance and Mitigation Requirements); have thereafter maintained continuous satisfactory compliance with those requirements for the period(s) of time set forth therein; and have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendants may serve



upon the United States a Request for Termination, stating that Defendants have satisfied the foregoing requirements, together with all necessary supporting documentation.

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

97. If the United States does not agree that the Consent Decree may be terminated, Defendants may invoke the dispute resolution provisions of Section XI. In that event, however, Defendants shall not invoke the formal dispute resolution provisions of Paragraph 68 until at least 60 days after service of their Request for Termination.

## **XX. PUBLIC PARTICIPATION**

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

## **XXI. SIGNATORIES/SERVICE**

99. Each undersigned representative of the Defendants and the Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents in this document.

100. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

## **XXII. INTEGRATION**

101. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and

approved pursuant to this Decree, no other document, representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

### XXIII. FINAL JUDGMENT

102. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

### XXIV. APPENDICES

103. The following Appendices are attached to and made part of this Consent Decree:

“Appendix A” is the industrial user permit issued by Orange County to KJPPP and KJMM on or about July 9, 2009 bearing the effective date of June 15, 2009.

“Appendix B” is the list of dates for each Religious Holiday for the remainder of calendar year 2014 and for calendar year 2015, and may be supplemented for subsequent years upon written agreement by the parties.

Dated and entered this 23 day of March, ~~2014~~ 2015.


  
UNITED STATES DISTRICT JUDGE


FOR THE UNITED STATES OF AMERICA:

10/22/14  
Dated

PREET BHARARA  
United States Attorney for the  
Southern District of New York

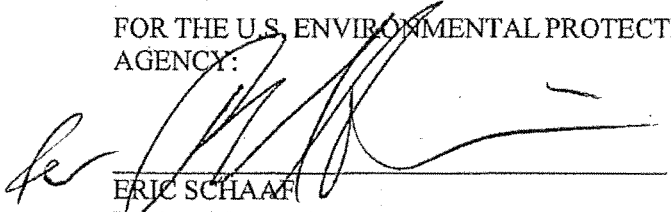
By:

  
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ELLEN MAHAN  
Deputy Section Chief  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section



FOR THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY:

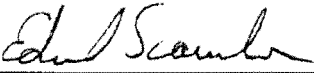


ERIC SCHAAF  
Regional Counsel  
U.S. Environmental Protection Agency, Region 2

20/27/14

FOR DEFENDANTS:

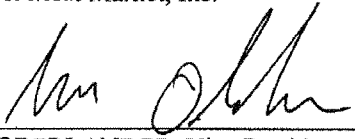
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Date

  
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EDWARD SCARVALONE  
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217 Broadway, 7<sup>th</sup> Floor  
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9/29/14  
Date

  
\_\_\_\_\_  
MAYER HIRSCH, President  
Kiryas Joel Meat Market, Inc.

9/29/14  
Date

  
\_\_\_\_\_  
CHAIM OBERLANDER, Vice President  
Kiryas Joel Poultry Processing Plant, Inc.