

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No. 2:17-cv-01377
)	
CITY OF WATERBURY and)	
SYNAGRO NORTHEAST, LLC,)	
<i>Defendants.</i>)	August 14, 2017

**NOTICE OF LODGING OF PROPOSED CONSENT DECREE
FOR 30-DAY PUBLIC COMMENT PERIOD**

The attached proposed *Consent Decree* is hereby lodged with the Court, pursuant to 28 C.F.R. § 50.7, for public comment. Notice of the lodging of this Consent Decree, and the opportunity to comment thereon, will be published in the Federal Register. The United States will then receive public comments on the proposed Consent Decree for the requisite 30-day public comment period. During the pendency of the public comment period, no action is required of this Court. After the public comment period has expired, the United States will respond to any comments timely received and, should it appear to the United States that the settlement is in the public interest, file a motion asking the Court to sign and enter the Consent Decree.

The United States respectfully requests that the Court take no action with respect to the lodged Consent Decree until the United States moves for entry of the Consent Decree or otherwise advises the Court.

Respectfully submitted,

For Plaintiff UNITED STATES OF AMERICA

THOMAS MARIANI
Chief, Environmental Enforcement Section
U.S. Department of Justice
Environment and Natural Resources Division

/s/ Brian Donohue
Brian Donohue, Senior Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
(202) 514-0414
brian.donohue@usdoj.gov

DEIRDRE M. DALY
United States Attorney
District of Connecticut

/s/ Vanessa Roberts Avery
Vanessa Roberts Avery (ct21000)
Assistant United States Attorney
U.S. Attorney's Office
450 Main Street
Hartford, Connecticut 06103
(860) 947-1101
vanessa.avery@usdoj.gov

OF COUNSEL:

THOMAS T. OLIVIER
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912
Olivier.tom@epa.gov

CERTIFICATION

I hereby certify that on August 14, 2017, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by electronic mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated in the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Vanessa Roberts Avery
Vanessa Roberts Avery (ct21000)
Assistant United States Attorney

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA,)
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 Plaintiff,)
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 v.)
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 CITY OF WATERBURY and)
 SYNAGRO NORTHEAST, LLC)
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 Defendants.)
 _____)

Civil No. _____

CONSENT DECREE

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, for injunctive relief and civil penalties pursuant to Sections 113(b)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b)(2), alleging that Defendants, the City of Waterbury, Connecticut (“Waterbury”) and Synagro Northeast, LLC (“Synagro”), violated regulations set forth in 40 C.F.R. Part 62, Subpart LLL, promulgated by EPA pursuant to Title I of the CAA, 42 U.S.C. §§ 7411 and 7429, and Section 129(f)(3) of the CAA, 42 U.S.C. § 7429(f)(3);

WHEREAS, the Complaint against Defendants alleges that Defendants violated the above-listed federal environmental statutes and regulations at Waterbury’s sewage sludge incinerator located at 199 Municipal Road, Waterbury, Connecticut (the “Facility”). The Facility is designed to treat sewage sludge with a fluidized bed sewage sludge incinerator.

WHEREAS, Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, 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 between 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, and with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and, over the Parties. Venue lies in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the alleged violations took place in this District. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Consent 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 113(b) of the CAA, 42 U.S.C. §§ 7413(b).

3. Notice of commencement of this action has been given to the State of Connecticut, specifically the Connecticut Department of Energy and Environmental Protection, by the United States.

II. 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 Decree are implemented. At least 30 Days prior to such transfer,

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Defendant 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 1, the United States Attorney for the District of Connecticut, and the United States Department of Justice in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this 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 Decree, as well as to any contractor retained to perform work required under this 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 their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CAA, 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:

a. "Business Day" shall mean a Day on which both EPA and Waterbury offices are open for business.

b. "Complaint" shall mean the complaint filed by the United States in this action.

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c. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXII (Appendices)).

d. "Day" shall mean a calendar day unless expressly stated to be a Business Day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next Business Day.

e. "Defendants" shall mean defendants the City of Waterbury, Connecticut and Synagro Northeast, LLC.

f. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

g. "Effective Date" shall have the definition provided in Section XIV (Effective Date).

h. "Facility" shall mean the sewage sludge incinerator unit owned or operated by Defendants and located at 199 Municipal Road, Waterbury, Connecticut.

i. "Interest" shall mean an amount calculated at the rate specified in 26 U.S.C. § 6621(a)(2).

j. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral.

k. "Parties" shall mean the United States and Defendants.

l. "Section" shall mean a portion of this Decree identified by a Roman numeral.

m. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

9. Within 30 Days after the Effective Date, Defendants shall pay the sum of \$104,000 as a civil penalty, together with Interest accruing from the Effective Date. Defendants shall be jointly and severally liable for the payment of this civil penalty.

10. Defendants shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Connecticut after the Effective Date. The payment instructions will be provided by the FLU and will include a Consolidated Debt Collection System (“CDCS”) number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to Defendants upon request. Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section XIII (Notices).

11. At the time of payment, Defendants shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIII; and (iii) to EPA in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in U.S. v. City of Waterbury and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-1-11647.

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

V. COMPLIANCE REQUIREMENTS

13. Defendants shall comply with the requirements of Appendix A and of Appendix B of this Consent Decree in accordance with the schedules therein. Appendix A and Appendix B are incorporated into and are fully enforceable under this Consent Decree.

14. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

15. If the submission is approved pursuant to Paragraph 14(a), Defendants shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 14(b) or (c), Defendant shall, upon written direction from EPA, take all actions identified in the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendants' right to dispute only the specified conditions or the disapproved portions, under Section IX (Dispute Resolution).

16. If the submission is disapproved in whole or in part pursuant to Paragraph 14(c) or (d), Defendants shall, within 45 Days or such longer period of time as EPA may allow if provided in writing (including electronic mail) to both of the Defendants correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

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17. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies in accordance with the preceding Paragraphs, subject to Defendants' right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

18. Any stipulated penalties applicable to the original submission, as provided in Section VII , shall accrue during the 45 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

19. Permits. Where any compliance obligation in Appendix A 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 VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if such Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

20. Within 30 Days of the close of each month after the Effective Date of this Consent Decree, until termination of this Decree pursuant to Section XVII (Termination), Defendants shall submit to EPA reports as required by 40 CFR § 62.15895, and shall submit to the U.S. Department of Justice and EPA in accordance with Section XIII (Notices) a monthly report for the preceding month that shall include: all listed compliance measures; completion of milestones; problems encountered or anticipated (together with implemented or proposed solutions); status of any permit applications; and, the results of any inspections or tests, or any repairs made.

21. If Defendants violate, or have reason to believe that they may violate, any requirement of this Consent Decree, Defendants shall make a written report to the United States of such violation and its likely duration, within 10 Business 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, correct, 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 the notice required by Section VIII (Force Majeure).

22. Whenever any violation of this Consent Decree or of the environmental statutes, regulations and permits referenced herein, or any other event affecting Defendants' performance

under this Decree, or the performance of the Facility, may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify EPA orally or by electronic mail as soon as possible, but no later than 24 hours after Defendants first knew of the violation or event that may pose such a threat.

23. All reports and notifications made pursuant to this Section shall be submitted to the persons designated in Section XIII (Notices).

24. Any report submitted by a Defendant under this Section 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 have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

25. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

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

27. 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.

VII. STIPULATED PENALTIES

28. Defendants shall be liable, jointly and severally, for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any payment of civil penalties, compliance requirements of this Decree and any work plan or schedule approved under this Decree, and submission of any required reports or notifications, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

29. Late Payment of Civil Penalty. If a civil penalty required to be paid under Section IV (Civil Penalty) is not paid when due, a stipulated penalty of \$500 per Day for each Day that the payment is not paid after the Due Date shall accrue and be paid by the Defendants, in accordance with Paragraph 32.

30. The following stipulated penalties shall accrue per violation per Day for each violation of any of the requirements specified in Section V (Compliance Requirements):

<u>Period of Noncompliance Penalty per Violation per Day</u>	
1st through 14th Day	\$250.00
15th through 30th Day	\$500.00
31st Day and beyond	\$1000.00

31. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI (Reporting Requirements):

<u>Period of Noncompliance Penalty per Violation per Day</u>	
1st through 14th Day	\$250.00

15th through 30th Day	\$500.00
31st Day and beyond	\$1000.00

32. Stipulated penalties under this Section shall begin to accrue on the Day a violation occurs, and shall continue to accrue for each Day until the Day upon which the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Stipulated penalties shall accrue regardless of whether the United States has notified Defendant that a violation of this Consent Decree has occurred.

33. Defendant shall pay any stipulated penalty within 30 Days after receiving the United States' written demand.

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

35. Stipulated penalties shall continue to accrue as provided in Paragraph 32, during any Dispute Resolution regarding stipulated penalties pursuant to Section IX, 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 or order.

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 subparagraph c, below.

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.

36. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraphs 10 and 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

37. 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 26 U.S.C. § 6621(a)(2), 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.

38. The payment of penalties and interest, if any, under this Section shall not alter in any way Defendants' obligations to complete the performance of the requirements of this Consent Decree.

39. Non-Exclusivity of Remedy. The stipulated penalty provisions of this Section shall be in addition to all other rights reserved by the United States pursuant to Section XI (Effect of Settlement/Reservation of Rights) below. Nothing in this Section shall be construed as prohibiting, altering or in any way limiting the ability of the United States to seek any other relief it deems appropriate for Defendants' violations of this Decree or statutes, regulations, or permits referenced within it, including but not limited to an action against Defendants for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However,

the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

40. "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 full 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 potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay or nonperformance and their adverse effects are minimized to the greatest extent possible. "Force majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

41. 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, a Defendant shall provide notice orally or by electronic mail to EPA as soon as possible but no later than within 72 hours of when Defendants first 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 event. 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.

42. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of obligations under this 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.

43. 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, which shall include notification by electronic mail.

44. If Defendants elect to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), they 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

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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 41 and 44. 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.

IX. DISPUTE RESOLUTION

45. 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.

46. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when 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 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 15 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

47. 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.

48. 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.

49. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten 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. Defendants' motion to the Court shall not raise new issues or submit new facts that were not previously presented to the United States during formal dispute resolution.

50. 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.

51. Standard of Review.

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a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 49 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendants shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 49, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

52. 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 nonperformance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 35. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

53. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the 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 either Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess compliance with this Consent Decree.

54. Upon request, and if feasible, Defendants shall provide EPA or its authorized representative splits of any samples taken by Defendants. Upon request, and if feasible, EPA shall provide Defendants splits of any samples taken by EPA.

55. 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, municipal or institutional policies or procedures, unless these procedures are the result of an applicable statute or judicial or

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administrative decision. 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.

56. 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 within their possession or control 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 is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants asserts 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.

57. 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. Defendants may make no claim of business confidentiality, privilege, or protection regarding any air emission records that Defendants are required to create or generate pursuant to this Consent Decree.

58. 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 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.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

59. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violation.

60. Except as expressly provided in this Consent Decree, the United States reserves all legal and equitable remedies available to enforce the provisions of the Consent Decree. 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.

61. Except as expressly provided in this Section, the Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CAA, any regulations or permits issued pursuant to these statutes, or any federal or state laws, regulations or permits.

62. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility,

Defendants shall not assert, and may not maintain, any defense or claim based on the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 59.

63. 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 CAA, or with any regulations or permits issued pursuant to the CAA, or with any other provisions of federal, State, or local laws, regulations, or permits.

64. 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.

65. 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.

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XII. COSTS

66. 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.

XIII. NOTICES

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

As to the United States by email: eescdcopy.enrd@usdoj.gov
RE: DJ# 90-5-2-1-11647

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-11647

As to EPA by mail: Susan Studlien, Division Director
Office of Environmental Stewardship
EPA Region I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

As to EPA by telephone: (617) 918-1737

As to EPA by email: Studlien.Susan@epa.gov

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As to Defendant Waterbury by mail: City of Waterbury
Office of the Corporation Counsel
City Hall Building
235 Grand Street – 3rd Floor
Waterbury, CT 06702

With a copy to: City of Waterbury
Water Pollution Control Department
General Manager
210 Municipal Road
Waterbury, CT 06708

As to Defendant Waterbury by e-mail: lwihbey@waterburyct.org
With copies to: dcuevas@waterburyct.org
lmchale@waterburyct.org

As to Defendant Synagro by mail: Synagro Technologies, Inc.
General Counsel
435 Williams Court, Suite 100
Baltimore, MD 21220

With a copy to: Synagro Technologies, Inc.
Vice President of Operations, Incineration
435 Williams Court, Suite 100
Baltimore, MD 21220

As to Defendant Synagro by e-mail: aslepian@synagro.com
With copies to: moxford@synagro.com
lbaroldi@synagro.com

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

69. Notices submitted pursuant to this Section, including electronic mailing, shall be deemed submitted upon mailing unless either (a) evidence to the contrary exists, or (b) otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

70. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendants hereby agree that they shall be bound to perform duties scheduled to occur prior to the Effective Date. 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.

XV. RETENTION OF JURISDICTION

71. 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 IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

72. 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 Decree, it shall be effective only upon approval by the Court.

73. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 51, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

74. After Defendants have completed the requirements of Section V (Compliance Requirements) of this Decree, have thereafter maintained continuous satisfactory compliance with this Decree for a period of two years, and have paid the civil penalty and any stipulated penalties and interest as required by this Consent Decree, Defendants may serve upon the United States a Request for Termination, stating that the requirements of this Consent Decree have been met, together with all necessary supporting documentation.

75. 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.

76. If the United States does not agree that the Decree may be terminated, Defendants may invoke dispute resolution under Section IX (Dispute Resolution). However, Defendants shall not seek dispute resolution of any dispute regarding termination until 30 Days after service of their Request for Termination.

XVIII. PUBLIC PARTICIPATION

77. 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.

XIX. SIGNATORIES/SERVICE

78. Each Party certifies that at least one of their undersigned representatives 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 to this document.

79. 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.

XX. INTEGRATION

80. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the 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, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXI. FINAL JUDGMENT

81. 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.

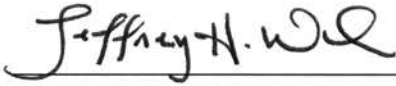
XXII. APPENDICES

82. The following Appendices are attached to and part of this Consent Decree: Appendix A is "Injunctive Relief", current as of the date of lodging. Appendix B is "Supplemental Measures", current as of the date of lodging.

Dated and entered this ___ day of _____, 2017.

UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF UNITED STATES OF AMERICA:



JEFFREY H. WOOD

Acting Assistant Attorney General

U.S. Department of Justice

Environment and Natural Resources Division

8/8/17

Date



BRIAN DONOHUE

Senior Attorney

U.S. Department of Justice

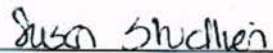
Environmental Enforcement Section

Environment and Natural Resources Division

8/10/17

Date

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



SUSAN STUDLIEN

Director

Office of Environmental Stewardship

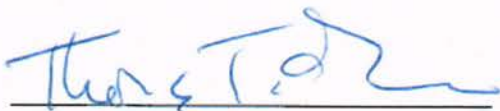
U.S. Environmental Protection Agency, Region 1

5 Post Office Square - Suite 100 (Mail Code OES04-5)

Boston, MA 02109-3912

06/28/2017

Date



THOMAS T. OLIVIER

Senior Enforcement Counsel

U.S. Environmental Protection Agency, Region 1

5 Post Office Square - Suite 100 (Mail Code OES04-3)

Boston, MA 02109-3912

6/23/17

Date

FOR DEFENDANT CITY OF WATERBURY:



NEIL M. O'LEARY

Mayor

City of Waterbury

City Hall Building


235 Grand Street

Waterbury, CT 06702



Date

FOR DEFENDANT SYNAGRO NORTHEAST, LLC:



AL SLEPIAN

Secretary

Synagro Northeast, LLC

435 Williams Court, Suite 100

Baltimore, MD 21220

6/19/17

Date

Appendix A
Injunctive Relief

Defendants Waterbury and Synagro shall comply with the provisions of this Appendix A, incorporated by reference into the foregoing Consent Decree, by taking the following actions in accordance with the timetables provided.

1. Compliance Obligations

- a. In accordance with the schedule set forth in this Appendix A and in the Consent Decree, Defendants shall comply with all applicable requirements of Subpart LLL and all applicable regulatory requirements referenced therein, including but not limited to those cited in this Appendix A
- b. Defendants have determined, based on prior emission tests, that to demonstrate compliance with the applicable mercury limit it will be necessary to design, install and operate a mercury control system. Accordingly, with respect to mercury, Defendants shall design, install, and operate a mercury control system, and demonstrate compliance with the applicable requirements of Subpart LLL and of this Appendix A.

2. Notification

- a. Continue to submit reports to the EPA as required by 40 CFR § 62.15895, by mail or email in accordance with Section XIII of the Consent Decree. Submit reports by the 15th of each calendar month until Defendants submit a final control plan and achieve compliance. The monthly reports shall provide a detailed update on compliance-related activities.

3. Initial Air Pollution Control Device Inspection

- a. No later than 30 days after the Effective Date (i) conduct an air pollution control device inspection and conduct all necessary repairs of the SSI as required by 40 CFR §§ 62.15990(a) and (b), and (ii) submit the results of the inspection to the EPA. Include a description of the results and any repairs made in the monthly reports required under 40 CFR § 62.15895. EPA acknowledges that Defendants have complied with this Paragraph 3.a. (on or about 3/21/16) with respect to all then-existing control devices.
- b. Within 60 days of installing any new air pollution control device, such as for mercury control, conduct an air pollution control device inspection as required by 40 CFR § 62.15990 and submit the results to the EPA by mail or email along with the applicable report in accordance with Section XIII of the Consent Decree.

4. Control Plan

- a. No later than 30 days after the Effective Date, submit to EPA a control plan for all pollutants for EPA review and comment. EPA acknowledges that Defendants have complied with this Paragraph 4.a. (on or about 8/3/16) with respect to all pollutants but mercury.
- b. According 40 CFR § 62.15900 the control plan must include:
 - i. A description of the devices for air pollution control and process changes that Defendants will use to comply with the emission limits and standards and other requirements of this subpart;
 - ii. The type(s) of waste to be burned if waste other than sewage sludge is burned in the unit;
 - iii. The maximum design sewage sludge burning capacity; and
 - iv. If applicable, a petition for site-specific operating limits under 40 CFR § 62.15965 (e.g., for mercury controls other than carbon injection). EPA acknowledges that Defendants have complied with this Paragraph 4.b. (on or about 8/3/16) for all devices/operating limits except for those designed for mercury control.
- c. Revise and resubmit the control plan to EPA as necessary to address EPA comments and/or within 60 days of becoming aware of changes in facility operations. EPA acknowledges that EPA accepted the submitted Control Plan (as revised) on or about 9/9/16 with respect to all pollutants but mercury.

5. Site-Specific Monitoring Plan

- a. No later than 30 days after the Effective Date, submit to EPA a site-specific monitoring plan ("SSMP") for EPA review and approval. EPA acknowledges that Defendants have complied with this Paragraph 5.a. (on or about 8/3/16) with respect to all pollutants but mercury.
- b. According to 40 CFR § 62.15995, the SSMP must include provisions for continuous parameter monitoring, ash handling system monitoring, and alternate monitoring, if applicable. Defendants must incorporate any approved changes (such as approved alternate monitoring parameters or petitions under 40 CFR § 62.15965) into the SSMP as required by 40 CFR § 62.15995(h).
- c. Include specific requirements by parameter and monitoring type as outlined at 40 CFR § 62.15995(a).

- d. Include specific requirements for the ash handling system as outlined at 40 CFR § 62.15995(d).
- e. Include specific requirements for alternate monitoring parameters as outlined at 40 CFR § 62.15995(e).
- f. Revise and resubmit the SSMP to EPA as necessary to address EPA comments and/or within 60 days of becoming aware of any changes in facility operations and or approvals of any alternate monitoring requests. EPA acknowledges that EPA accepted the submitted SSMP (as revised) on or about 9/9/16 with respect to all pollutants but mercury.

6. Notification of Performance Test and Site-Specific Test Plan

- a. Within 30 days of EPA approval of the SSMP, submit a notification of performance test for all pollutants to EPA. Along with the notification of performance test, submit to EPA a site-specific test plan to EPA for approval. EPA acknowledges that Defendants have complied with this Paragraph 6 (on or about 10/6/16).

7. Emission Limits and Standards – Performance Testing

- a. Within 45 days of EPA approval of the site specific test plan, conduct an initial performance test to demonstrate compliance with all emission limits and standards. See 40 CFR §§ 62.15980(a), 60.8, 62.16000, and 62.16015. EPA acknowledges that Defendants have complied with this Paragraph 7 by virtue of a performance test completed the week of 10/10/16.

8. Operating Limits

- a. Establish the site-specific operating limits during the initial performance test as required by 40 CFR § 62.15985.
- b. Demonstrate compliance with the established operating limits by continuously monitoring applicable operating parameters, in accordance with 40 CFR § 62.16005.
- c. Confirm existing (or reestablish new) site-specific operating limits as required by 40 CFR § 62.16000.
- d. Include documentation of Paragraphs 8.a, 8.b & 8.c compliance in the Initial Compliance Report required by Paragraph 9.a. below.

9. Initial Compliance Report

- a. By December 15, 2016, submit the information required by 40 CFR § 62.16030(b), including, but not limited to, the following:
 - i. The complete test report for the initial performance test results;
 - ii. The initial performance evaluation of any continuous monitoring systems;
 - iii. The values for the site-specific operating limits including calculations and methods;
 - iv. The results of the initial air pollution control device inspection;
 - v. The SSMP for all pollutants; and
 - vi. The SSMP for the ash handling system.
- b. If the initial compliance report fails to demonstrate compliance with emission limits for any pollutant other than mercury, such report shall propose measures including a schedule, for EPA review and approval, for attaining and demonstrating compliance with the applicable emission limit as expeditiously as practicable.
- c. EPA acknowledges the submission of an initial compliance report by December 15, 2016, that contains some but not all of the required elements.

10. Final Compliance Demonstration

- a. No later than 12 months after the Effective Date, complete the installation and commence operation of the mercury control system and any other controls necessary to achieve compliance, and submit to EPA by email or mail in accordance with Section XIII of the Consent Decree a final control plan for EPA approval that reflects the final configuration of the facility and any approved petitions under 40 CFR § 62.15965.
- b. No later than 12 months after the Effective Date, submit to EPA by email or mail in accordance with Section XIII of the Consent Decree a final SSMP that incorporates any approved alternative monitoring requests such as for mercury control other than carbon injection.
- c. No later than 30 days after EPA approval of the final control plan and final SSMP, submit to EPA by email or mail in accordance with Section XIII of the Consent Decree a site-specific test plan for all Subpart LLL pollutants to EPA for approval.

- d. Within 30 days of EPA approval of the site specific test plan, conduct a performance test to demonstrate compliance with emission limits and standards. See 40 CFR §§ 62.15980(a), 60.8, 62.16000, and 62.16015.
- e. Establish revised site-specific operating limits during the performance test as required by 40 CFR § 62.15985.
- f. Confirm existing (or reestablish new) site-specific operating limits as required by 40 CFR § 62.16000.
- g. Within 60 days of completing the performance test:
 - i. Submit to EPA by email or mail in accordance with Section XIII of the Consent Decree a final test report.
 - ii. Revise and resubmit to EPA by email or mail in accordance with Section XIII of the Consent Decree the initial compliance report as appropriate.
- h. Defendants shall meet all the requirements of Subpart LLL at the Facility no later than 18 months after the Effective Date.
- i. If the final compliance demonstration fails to demonstrate compliance with emission limits for any pollutant, such report shall propose measures and a schedule, for EPA review and approval, for attaining and demonstrating compliance with the applicable emission limit(s) as expeditiously as practicable. Such report shall not extend the compliance deadline in subparagraph h above or otherwise affect Defendants' compliance obligations under Subpart LLL.

11. Amendment to Title V Operating Permit Application

- a. No later than 12 months after the Effective Date, submit to the Connecticut Department of Energy and Environmental Protection ("CT DEEP"), with a copy to EPA by email or mail in accordance with Section XIII of the Consent Decree, an amendment to the Facility's Title V Operating Permit application, in accordance with 40 CFR. § 70.5(b).

**Appendix B
Supplemental Measures**

Defendants Waterbury and Synagro shall comply with the provisions of this Appendix B, incorporated by reference into the foregoing Consent Decree, by taking the following actions in accordance with the timetables provided. Defendants shall comply with these provisions of Appendix B until Defendants submit a final compliance demonstration under Appendix A of this Consent Decree that demonstrates compliance with all emission limits of 40 CFR Part 62, Subpart LLL.

1. Reporting

Defendants shall submit monthly reports to the EPA to provide a detailed update on all supplemental measures under this Appendix B to the Consent Decree. Defendants shall submit such reports by mail or email in accordance with Section XIII of the Consent Decree. Defendants shall submit reports by the 15th of each calendar month until Defendants submit a final compliance demonstration under Appendix A of this Consent Decree that demonstrates compliance with all emission limits of 40 CFR Part 62, Subpart LLL.

2. Mercury Outreach to Dental Offices

- a. No later than 30 days after the Effective Date, Defendant Waterbury shall mail initial mercury outreach letters to the dental facilities that discharge to the Waterbury Water Pollution Control Facility ("Waterbury WPCF").
- b. No later than 30 days after the Effective Date, Defendant Synagro shall mail initial mercury outreach letters to all Waterbury WPCF sludge disposal customers
- c. No later than 30 days after the Effective Date, Defendant Waterbury shall mail initial mercury outreach letters to Waterbury WPCF municipal customers.
- d. No later than 90 days after the Effective Date, Defendants Waterbury and Synagro shall mail follow-up mercury outreach letters to those who did not respond to the initial mailings.
- e. Defendants Waterbury and Synagro shall continue to mail follow-up mercury outreach letters to those who did not respond to the initial mailings at least every six (6) months thereafter until Defendants submit a final control plan and achieve compliance.

3. Dental Office Inspections

- a. No later than 90 days after the Effective Date, Defendant Waterbury shall conduct an inspection of the dental facilities that discharge to the Waterbury Water Pollution Control Facility. Inspections shall include:
 - i. On-site inspection of amalgam separators and maintenance records.
 - ii. Verify the information provided to the CT DEEP in the certifications forms in accordance with the state Best Management Practices program.
 - iii. Leave Hg Mitigation Best Practice information and CT DEEP filing brochure.
- b. If any inspection conducted as provided in (a) above reveals a lack of proper maintenance or malfunctioning equipment, Defendant Waterbury shall require the dental facility to repair the malfunctioning equipment and provide written documentation to Defendant Waterbury of said repairs within 30 days of issuance of notice from Defendant Waterbury of the required repairs.
- c. Within 90 days of issuance of the notice as provided in (b) above, Defendant Waterbury shall re-inspect all dental facilities requiring repairs. If equipment remains malfunctioning, Defendant Waterbury shall issue a notice of violation to the offending dental facility. The notice of violation may include, but not be limited to the payment of a penalty to Defendant Waterbury.
- d. If any inspection conducted as provided in (a) above reveals inaccurate certificate form(s), Defendant Waterbury shall provide notice to CT DEEP of said inaccuracies.

4. Additional Merchant Facility Actions

- a. As for merchant tonnages of biosolids tendered for incineration at the Facility by its municipal clients, Defendant Synagro will continue to monitor the mercury (Hg) concentrations in the sludge at the frequency required by 40 CFR Part 503. If Defendant Synagro observes an increase of 25% or greater in the Hg concentration in the sludge tendered by a municipality, Defendant Synagro will request an additional Hg sludge sample to be taken and Hg analysis be performed by the applicable municipality. If the sludge Hg content remains elevated, Defendant Synagro will request the applicable municipality to perform an Industrial Wastewater Pretreatment Program assessment of the cause of the elevated Hg content and report on the findings

and corrective actions to Defendant Synagro within thirty (30) days of Defendant Synagro's request.

- b. Defendant Synagro is aware of EPA's proposal of dental effluent standards to reduce discharges of Hg from dental offices into publicly owned treatment works. Defendant Synagro will provide at least semi-annual updates (from the Effective Date) by mail or email in accordance with Section XIII of the Consent Decree on the status of EPA's Dental Effluent Guidelines to its municipal clients that tender sludge for incineration at the Facility.

5. Alternative Mercury Monitoring

- a. The Facility serves as a regional sludge disposal facility that provides sludge processing services to customers in Connecticut, Massachusetts, and New York. Defendant Synagro maintains a sludge-monitoring program that includes collecting daily samples to create monthly composite sampling of sludge feed to the Facility. All of the sludge monitoring includes analysis for mercury.
- b. Within 30 days of the Effective Date, Defendant Synagro will augment its monthly composite sampling and testing program with an additional composite sampling and testing plan to be completed for mercury each month. Defendant Synagro will assemble the composite sample for the full monthly composite test in the 1st week of each month and will assemble the composite sample for the augmented mercury test in the third week of each month.

6. Sludge Mercury Content Monitoring and Response Plan

- a. Within 60 days of the Effective Date, Defendant Synagro will perform the calculated theoretical mercury emission analysis based on the twice monthly composite sludge mercury content test results, average sludge feed rate for the month, and stack exhaust flow from annual emissions test corrected to 7% O₂.
- b. Commencing within 60 days of the Effective Date, on a twice-monthly monthly basis, Synagro will analyze test results from the twice-monthly composite sample tests. The sludge content, in conjunction with the average sludge feed rate for the month, will be used to develop the mass of mercury entering the Facility. The mass of mercury will be divided by the stack exhaust flowrate (from annual emissions test corrected to 7% O₂) to develop a calculated theoretical mercury stack concentration.
- c. If the calculated theoretical mercury emission calculated from the sludge mercury concentration (calculation provided below) is equal or greater to 0.042 mg/dscm, the Defendant Synagro and Defendant Waterbury will review the Waterbury treatment plant's operations and collection system activities over the

past two months to determine any unusual actions that might have resulted in elevated sludge mercury level. If there have been no unusual operations, a more in-depth review will be completed by Defendant Synagro, as follows:

- i. Defendant Synagro will conduct escalated monthly sampling and testing sludge from all customers that accounted for 10% or more of total sludge volume for the previous month.
- ii. Defendant Synagro will continue escalated semi-monthly sampling and testing for all customers that accounted for 10% or more of total sludge volume until the calculated theoretical mercury emission from the monthly composite test results return to less than 0.042 mg/dscm, at which point sampling and testing will revert to the standard protocol.
- iii. Should calculated theoretical mercury emission from an individual customer be 0.042 mg/dscm or greater during escalated semi-monthly sampling and testing, Defendant Synagro will contact that customer to notify them of the test result, and to determine if there were any unusual activities or process changes that might have occurred during the past two months that could have resulted in higher mercury concentrations within their wastewater sludge. If there have been unusual activities and changes, Defendant Synagro will request information regarding the activity, the extent of the activities that may have resulted in elevated mercury, and the actions taken to prevent the activity from reoccurring.
- iv. Following corrective action by a customer, Defendant Synagro will obtain a post-action sample of the customer's sludge and test for mercury sludge concentration. If calculated theoretical mercury emission for this sample is less than 0.042 mg/dscm, customer-specific semi-monthly sampling/testing will be discontinued. Otherwise, semi-monthly sampling/testing for this customer will continue until semi-monthly theoretical calculated mercury emission (from semi-monthly composite sample) test result is less than 0.042 mg/dscm.
- v. Should calculated theoretical mercury emissions from an individual customer be 0.042 mg/dscm or greater during escalated semi-monthly sampling and testing in four consecutive samples, within 30 days of the fourth test result, Defendant Synagro will seek to arrange an in person meeting with the customer to communicate the test results and to seek the customer's cooperation in doing a process review for likely sources of higher mercury levels in their sludge. Based upon results of this process review, Defendant Synagro will request a mercury sludge concentration action plan from the customer, and will follow up with

the customer on a quarterly basis to confirm completion of the action plan and effectiveness of the action plan.

- vi. Should a customer be uncooperative in responding to previous actions or should calculated theoretical mercury emission results from an individual customer be 0.042 mg/dscm or greater during escalated semi-monthly sampling and testing in six consecutive samples, Defendant Synagro will review contractual options to address disposal of this customer's sludge to minimize its impact on calculated theoretical mercury emission for the overall Facility.

7. Calculated Theoretical Mercury Emission

- a. Sludge mercury concentration x average monthly sludge feed rate / dscm³/hr
- b. Sludge mercury concentration = concentration of mercury in each sludge monthly composite
- c. Average monthly sludge feed rate = total sludge feed to MHC / hours of sludge feed (period of time corresponding to sludge sampling)
- d. dscm³/hr = stack flow from annual emissions test corrected to 7% O₂

****END****