

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Articles 17, 25 and 27
of the New York State Environmental Conservation Law
and Article 12 of the Navigation Law and of the
regulations promulgated pursuant thereto at
Parts 373, 610, *et seq.*, 661, *et seq.*, 700, *et seq.*
and 750, *et seq.* of Title 6 and Part 30, *et seq.*, of Title 17
of the Official Compilation of Codes, Rules and Regulations
of the State of New York,

- by -

Consolidated Edison Company of New York, Inc.,

Respondent.

DEC Index No. R2-1023-88-06, *et seq.*

ORDER ON CONSENT

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GENERAL COUNSEL

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STATE OF NEW YORK
 DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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 : ON
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 - by - : DEC Index No.
 Consolidated Edison Company of New York, Inc., : R2-1023-88-06
 : *et seq.*
 Respondent. :
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WHEREAS,

1. The New York State Department of Environmental Conservation ("Department") is responsible for the enforcement of the Environmental Conservation Law ("ECL") of the State of New York, and Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York ("6 NYCRR") and any Orders issued thereunder.

2. The Department is and has been the agency of the State of New York having sole and, since 1985 as successor to the New York State Department of Transportation, exclusive jurisdiction pursuant to Article 17, Title 10 of the ECL, Section 12 of Chapter 35 of the Laws of 1985, Article 12 of the Navigation Law

CONSOLIDATED EDISON ORDER ON CONSENT

("NL") and 6 NYCRR Parts 610, *et seq.* and 17 NYCRR Part 30, *et seq.*, to regulate the transportation and storage of petroleum products within the State of New York.

3. Consolidated Edison Company of New York, Inc. ("ConEd"), is a New York Corporation with offices at 4 Irving Place in the City, County and State of New York and a person as that term is defined in NL § 172 and ECL §§ 17-0105, 25-0103 and 27-0901.

4. ConEd owns and operates Major Oil Storage Facilities ("MOSFs"), Petroleum Bulk Storage Facilities ("PBSs") and other facilities as described in attached Appendix G.

5. On June 9, 1992, the Department Staff served a Notice of Hearing and Complaint, DEC Case No. R2-1023-88-06, *et seq.*, ("Complaint") upon ConEd alleging violations of Articles 17, 25 and 27 of the ECL, Article 12 of the Navigation Law and 6 NYCRR Parts 373, 610, *et seq.*, 661, *et seq.*, 700, *et seq.* and 750, *et seq.*, and 17 NYCRR Part 30, *et seq.* More particularly, over the period of time 1984-1992, on numerous occasions, ConEd: operated facilities without requisite permits therefor; made allegedly false filings with the Department; discharged petroleum products to the environment and failed to report such discharges in a timely manner, contain such discharges, or undertake and accomplish remediation of environmental contamination caused by such discharges; possessed, stored improperly and discharged product containing hazardous waste to the environment without authorization, causing contravention of water quality standards; violated

explicit requirements of SPDES permits granted for the operation of various facilities; effected discharges to receiving waters in excess of the limits therefor established by law and to wetlands which caused contravention of water quality standards in receiving waters and contaminated such wetlands, respectively.

6. ConEd served an Answer on October 19, 1993, in which it admits certain allegations of the Complaint, denies certain allegations of the Complaint, or denies knowledge or information sufficient to form a belief as to the truth of certain allegations, and asserts various affirmative defenses regarding certain allegations of the Complaint.

7. ConEd has cooperated with Department Staff in their investigation of this matter, has entered into Memoranda of Understanding with the Department under which it has paid for two Department environmental monitors for its facilities and operations, has applied for MOSF licenses for the fuel oil pipelines listed in Appendix G and SPDES permits for the unauthorized discharge point sources referred to in the Complaint, has installed pollution control equipment with the Department's approval to improve its compliance with the effluent limitations of the SPDES permits listed in Appendix G, and has completed Department-approved site investigations for some of the petroleum discharges referred to in the Complaint.

8. The objectives of this Order include requiring:
- (a) ConEd's compliance with the ECL, Article 12 of the Navigation Law, and the regulations promulgated thereunder;
 - (b) adequate remediation for the past discharges of petroleum from ConEd's facilities;
 - (c) ConEd's funding of approved Environmental Projects within its service areas;
 - (d) payment of a civil penalty by ConEd for certain past violations of the ECL, Article 12 of the Navigation Law and the regulations promulgated thereunder; and
 - (e) implementation of independent audits to determine the level of compliance at ConEd facilities and to evaluate ConEd's environmental management program and to provide appropriate recommendations to improve ConEd's existing environmental management systems.

9. ConEd hereby waives its right to a hearing with respect to this matter in a manner provided for by law and consents to the issuance of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, THEREFORE, having considered this matter and being duly advised,

IT IS ORDERED THAT:

CONSOLIDATED EDISON ORDER ON CONSENT

ARTICLE I. PENALTY.

A. ConEd is hereby assessed a civil penalty as follows:

1. ConEd shall pay the amount of nine million dollars (\$9,000,000.00) to the Department within thirty (30) days of the effective date of this Order. ConEd shall pay this sum within thirty (30) days after the effective date of this Order by certified checks or money orders made payable as set forth below and delivered to the Department's offices, 50 Wolf Road, Albany, New York 12233-1500, Attn: Marc S. Gerstman, Esq. Checks shall be made out as follows: one million five hundred thousand dollars (\$1,500,000.00) to "Natural Resource Damages Fund Account"; three million dollars (\$3,000,000.00) to "New York Environmental Protection and Oil Spill Compensation Fund"; one million five hundred thousand dollars (\$1,500,000.00) to "Marine Resources Account of the Conservation Fund"; and three million dollars (\$3,000,000.00) to "Department of Environmental Conservation."

2. An additional one million dollars (\$1,000,000) is assessed, but is suspended upon the condition that ConEd remain in compliance with the provisions of this Order. In the event that ConEd fails to comply with any provision of this Order, the Department may serve ConEd with a notice of noncompliance which shall set forth the nature of ConEd's noncompliance. ConEd shall pay the suspended penalty, or such portion thereof as may be specified by the Department in its notice of noncompliance, within 30 days of service of the notice of noncompliance, unless ConEd pursues its rights to contest the notice and penal

assessment as provided for in Article IX [DISPUTE RESOLUTION] of this Order, in which circumstance, payment shall become due and payable in accordance with the provisions of the Decision and Order of the reviewing court or the determination of the Regional Director. The assessment of suspended penalties shall not limit the Department's right to seek such other relief as may be authorized by law. Neither the Department's demand for payment of suspended penalties, nor ConEd's payment thereof shall discharge ConEd from the obligation to comply with any obligation established under this Order. The Department will not assess suspended penalties for other than substantive or material violations of this Order.

B. With regard to any penalty due pursuant to this Order which is not paid by the specified due date, ConEd shall be liable for and shall pay interest from the due date at the rate specified by the New York Civil Practice Law and Rules for interest on a judgment.

C. In the event that ConEd fails to pursue its rights to contest the notice of noncompliance as provided for in Article IX [DISPUTE RESOLUTION] of this Order, and fails to pay any penalty due pursuant to this Order by the date payment is due, this Order together with a notice of noncompliance specifying the amount due may be filed and enforced by the Department as a civil judgment pursuant to Civil Practice Law and Rules Article 50, *et seq.*, for the total penalty, including interest, in the amount set forth in the notice of noncompliance, in the State of New York and in any other jurisdiction(s) in which ConEd is authorized to do business, does

business or has any assets, without the need for any further proceedings whatsoever.

ARTICLE II. ENVIRONMENTAL PROJECTS.

Within sixty (60) days of the effective date of this Order, ConEd shall deposit the amount of five million dollars (\$5,000,000.00) with the Hudson River Foundation for Science and Environmental Research, Inc., a corporation organized and existing under the New York State Not-For-Profit Corporation Law with its principal place of business at 122 East 42nd Street, New York, New York 10168, to be used to establish a "New York City Environmental Trust Fund", unless otherwise directed by the Department within such time.

The five million dollars (\$5,000,000.00) will be expended on Department-approved projects within the City of New York that will: (a) protect, preserve, improve or restore the environment; (b) enhance the public's enjoyment of natural resources; or (c) enhance the public's awareness, knowledge or understanding of ecological principles, natural resources or other environmental issues.

ARTICLE III. COMPREHENSIVE ENVIRONMENTAL AUDIT PROGRAMS.

Comprehensive environmental audits of ConEd's facilities and operations shall be conducted at ConEd's expense by one or more independent, third-party expert(s) in accordance with the provisions of Appendix A to this Order.

ARTICLE IV. REMEDIATION.

A. ConEd shall address the environmental effects of each of the discharges of petroleum products identified in Appendix B to this Order in accordance with the provisions of Appendix B of this Order.

B. In addition to the discharges identified in Appendix B of this Order, the requirements of ¶A of this Article shall apply to discharges of petroleum that occurred at ConEd's facilities prior to the effective date of this Order but that were not alleged by Staff in the Complaint. In the event that any such discharges are discovered during the Audits to be performed pursuant to Article III [COMPREHENSIVE ENVIRONMENTAL AUDIT PROGRAMS] or through any other means, ConEd shall address the environmental effects of each such discharge of petroleum product in accordance with the provisions of Appendix B of this Order. Modification of any SCHEDULE established by Appendix B required as a result of the discovery of such a discharge or the environmental effects of such a discharge that occurred prior to the effective date of this Order may be effected upon the agreement of the Department Staff and ConEd, which modification(s) shall require only the approval of the Regional Director of Region 2 to be incorporated into this Order and be effective as an integral part of this Order.

C. Upon the effective date of this Order, ConEd shall assume total and exclusive responsibility for continuing the remediation activities commenced by the State for the incidents described in ¶¶404 through 412, of the Complaint, and shall

complete such remediation activities in accordance with the provisions of Appendix B of this Order. By no later than the tenth (10th) day after the effective date of this Order, ConEd shall remit a check in the amount of five hundred twenty thousand six hundred twenty four dollars and one cent (\$520,624.01) as and for reimbursement for the expenses incurred by the New York Environmental Protection and Spill Compensation Fund ("Oil Spill Fund") in connection with such activities to the date thereof. This check shall be drawn to the order of the Comptroller, State of New York, shall bear reference to Spill No.87-7045/PIN No.983371 and shall be sent to Gary S. Bowitch, Esq., Assistant Attorney General in Charge, Oil Spill Recoveries Unit, Civil Recoveries Bureau, New York State Department of Law, Empire State Plaza, Albany, New York 12224. ConEd shall be responsible for all payments due from the Department or State to any contractor with respect to these remediation activities as of the date of ConEd's takeover of such activities and for any additional sums theretofore paid by the Oil Spill Fund but not included for any reason in the total set forth in this paragraph, and shall remit such payments by no later than the thirtieth (30th) day following demand by the State therefor.

ARTICLE V. BEST MANAGEMENT PRACTICES PLANS.

A. Development.

ConEd shall develop and implement Best Management Practices Plans ("BMP Plans"), to be submitted to and approved by the Department. The

requirements for the BMP Plans and schedules regarding their development and implementation are attached as:

- ◆ Appendix C - Fuel Oil Pipelines;
- ◆ Appendix D - Di-Electric Cable System;
- ◆ Appendix E - Major Onshore Petroleum Storage Facilities; and
- ◆ Appendix F - Facility Pollutant Discharge Systems.

B. Purpose.

The objectives of the BMP Plans shall be the prevention or minimization of the release and environmental impact of any deleterious substance, including but not limited to those listed in 6 NYCRR Parts 597 and 703-704 and the Navigation Law, into the environment of the State, provision for timely notification to the Department of any such releases, provision for sufficient emergency equipment and other procedures necessary to respond to such releases, and prevention or minimization of incidents of discharges of pollutants in excess of SPDES permit limits.

C. Implementation.

Once a particular BMP Plan is approved by the Department, ConEd shall implement the plan pursuant to the time schedules contained therein.

ARTICLE VI. ENVIRONMENTAL MONITOR.

A. Establishment of Monitor Positions

ConEd shall make payments to the Department in accordance with the provisions of this Article, for the funding of certain on-site, Department Staff environmental monitors (collectively, the "Monitor"), whose primary duties will be: (i) to enhance the Department's ability to monitor and inspect ConEd's facilities and thereby facilitate ConEd's compliance with the requirements of the ECL and any rules and regulations promulgated pursuant thereto, federal requirements enforced by the Department, and any Department permits, Orders and Agreements; and (ii) to monitor the implementation of the activities required by this Order. The duties of the Monitor will include, but not be limited to, the following:

1. participating in the processing and review of applications by ConEd for Department approvals;
2. overseeing ConEd's implementation of hazardous waste reduction plans;
3. overseeing ConEd's compliance with existing and future Consent Orders, including processing and review of submissions for Department approval;
4. informing ConEd and its facility operators of deficiencies in operations;

5. monitoring required sampling by ConEd and assuring that such sampling is carried out in accordance with approved protocol(s);
6. investigating and reporting complaints against ConEd;
7. participating in informational meetings and public hearings regarding ConEd's facilities;
8. initiating and participating in enforcement actions related to ConEd's facilities or operations; and
9. maintaining records and reports, including a monthly report, for the activities described above.

B. At no time will the number of monitors exceed four (4). Two (2) monitors will be funded through and including December 31, 1999, unless otherwise extended by agreement of the Department and ConEd; the third (3rd) monitor will be funded from the effective date of the Order until the time that ConEd completes and the Department accepts the work required to be performed by Appendix B of this Order; and the fourth (4th) will be funded from the effective date of the Order until the time that ConEd completes and the Department accepts the work required to be performed by Appendix F of this Order (other than weekly oil discharge prevention inspections).

C. Funding

Additional funds shall be deposited into the existing ConEd Environmental Monitoring Account to fund the previously established two monitor positions and additional monitors as provided by this Paragraph.

1. On or before the tenth (10th) day following the effective date of this Order, ConEd shall pay to the Department the additional sum of one hundred fifty thousand dollars (\$150,000.00). This additional sum represents an estimate of the annual cost of two (2) monitors in addition to the two (2) monitors whose positions were created pursuant to the *Memorandum of Understanding* between the Department and ConEd made as of December 29, 1992, as extended by the parties' *Memorandum of Understanding* made as of December 29, 1993, said *Memoranda of Understanding* being merged into and superseded by this Article of this Order, for a total of four (4) monitors. Subsequent quarterly payments consistent with ¶¶B, C(2) and C(3) of this Article shall be made, for the duration of this Order or until the Department makes the determinations described in ¶¶B and C(7) of this Article, to maintain an account balance sufficient to meet the next nine months' anticipated expenses. Such quarterly payments shall be made as provided by this Article.

2. Costs covered by the fund established for the Monitor shall include:

- (a) direct personal service costs and fringe benefits of up to four (4) full-time equivalent employees, support, back-up staff and monitor supervisor, including the

cost of replacement personnel for the regularly assigned Monitor, until such time as the Department has acknowledged in writing that ConEd has satisfactorily completed all of its obligations created by this Order; and

- (b) direct non-personal service costs including, without being limited to, purchase or lease of a total of three (3) vehicles and their full operating costs, purchase of a total of four (4) personal computers and associated equipment, any appropriate chemical sampling and analysis, DEC management directed training related to improving the monitor's job performance, and other necessary supplies and equipment;
- (c) statutory salary increases; and
- (d) overhead or support costs at the Federal Indirect Cost Rate; and

3. The Department may revise the required payment on a quarterly basis to include the costs of monitoring to the Department, as set forth in ¶C(2) of this Article. This quarterly revision may take into account factors such as the specific number of monitor positions required pursuant to ¶B of this Article during the next quarter, inflation, salary increases, accrued interest to be applied to the available balance and changes in operating hours and procedures. The

Department will provide ConEd with a written explanation of the basis for any modification.

4. Within thirty (30) days after receipt of a quarterly statement/invoice from the Department that a payment is due, ConEd shall forward payment to the Department, 50 Wolf Road, Room 608, Albany, New York 12233-1510 ATTN: Environmental Monitors.

5. Upon a determination by the Department that the Monitor is no longer required, the unexpended balance of the fund will be returned to ConEd.

6. Failure to make the required payments shall be a violation of this Order and the Department reserves all rights to take appropriate action to enforce the above payment provisions.

7. If at some time in the future an additional Monitor is required to be funded by ConEd, as a condition of a permit issued to ConEd by the Department, then, upon the happening of such an event, such permit requirements, including methods and amounts of payments, shall supersede the provisions of this paragraph with respect to that Monitor position only.

8. The Department will report to ConEd quarterly the number of hours worked by each person fulfilling the role of Monitor in the previous quarter. Upon written request by ConEd, the Department will make available to ConEd any records (e.g., vouchers, time records) relating to such monitor costs, consistent with the Public Officers Law and 6 NYCRR Part 616.

D. ConEd Health and Safety and Operational Requirements

The Monitor will, when present at any ConEd facility, abide by all of ConEd's health and safety and operational requirements and policies; *provided, however,* that this paragraph shall not be construed as limiting the Monitor's powers as otherwise provided for by law and shall not result in the Monitor's being afforded less protection than the Monitor would be if the Monitor were to abide by the Department's health and safety requirements. The Monitor will be bound by ConEd's trade secret confidentiality requirements and policies with respect to persons other than the Department or ConEd, consistent with the principles in 6 NYCRR Part 616.

E. Monitor Access

1. Upon presentation of appropriate Department credentials, the Monitor will have access to all ConEd facilities and to relevant records during all hours of operation, in order to inspect and/or perform such tests or undertake such other actions as the Monitor may deem appropriate for ascertaining ConEd's compliance with the provisions of this Order.

2. ConEd is prohibited from imposing upon a Monitor a requirement regarding the use of safety apparel or safety equipment that is not strictly enforced by ConEd with respect to all other persons, regardless of employer, under similar circumstances. ConEd shall be in violation of this Order if it attempts to impose such a requirement.

3. Without in any way limiting the legal authority that the Department has to enter any regulated premises, a Monitor will undergo safety and

health training required of ConEd personnel or ConEd contractor personnel prior to being given access to a particular facility or site, subject to the following:

(a) Upon notification by ConEd to the Department of the mandatory training requirement(s) for such access, ConEd and the Department shall meet at the earliest possible time thereafter to address the issue of whether such training is reasonable and necessary for purposes of Monitor access. In the event that the Department determines that such training is not reasonable and necessary or required under applicable federal, State or local laws, rules or regulations, access shall be granted without such training, or upon the monitor's presentation of an appropriate certificate of substantially similar training, or upon the monitor's execution and presentation of an appropriate waiver, consent or acknowledgement as are more fully described in ¶E(3)(b) of this Article.

(b) If the Department does not determine that the mandatory training is unreasonable or unnecessary,

(i) ConEd will accept certification by the Department that the Monitor has received training of the nature considered by the Department to be substantially similar to that required for access;

(ii) In the event that the Department determines that a Monitor shall enter such a facility or site without such training, the Monitor shall be given access upon presenting an executed waiver, consent or acknowledgment required of others given access although not having had such training;

(iii) In the event that access to a particular facility or site requires specialized training not received by the Monitor and such training is required under applicable federal, state, or local laws, rules or regulations or the Department determines for any other reason that the Monitor should be trained prior to entry, ConEd shall bear the cost of the necessary training, to be undergone at the earliest possible date, the expense thereof to be added to the invoice for the subsequent quarterly payment to be made in accordance with this Article. ConEd, at its option and expense, may arrange for and provide any training, medical, and other examinations required by the Nuclear Regulatory Commission ("NRC") as a condition to entering any ConEd facility area subject to the jurisdiction of the NRC.

ARTICLE VII. SUBMITTAL REVIEW AND APPROVAL.

A. Unless otherwise provided, whenever the Department's review and approval is required under the terms of this Order, including the Appendices attached hereto, with respect to any document, plan or other required submission (hereinafter, "Submittal"), the following provisions will apply:

1. Should ConEd fail to receive any notification due from the Department within the time provided for herein, ConEd shall write to the Department to determine whether the Department intends to comment on the Submittal or Revised Submittal in question, and wait fifteen (15) days for a response to that letter, before undertaking any of the activities described in and proposed by that Submittal or Revised Submittal.

2. Within sixty (60) days after receipt of a Submittal, the Department will determine if it fulfills the terms of this Order and will provide written notification to ConEd of its approval or disapproval of the Submittal.

3. In the event that the Department disapproves any Submittal, it will state the reasons for such disapproval with sufficient particularity so as to allow ConEd to remedy any alleged deficiency.

4. When any Submittal is disapproved by the Department, ConEd shall submit a revision to such document, plan or other submission ("Revised Submittal") within thirty (30) days of its receipt of the Department's notice of disapproval, or such other reasonable period as the Department may provide upon its own volition or upon written request by ConEd. Such Revised Submittal shall address each deficiency noted in the Department's notice.

5. Within sixty (60) days of receipt of any Revised Submittal, the Department will review the Revised Submittal and determine if it fulfills the terms of this Order and will provide written notification to ConEd of its determination that it is approved, disapproved or approved conditioned upon such modifications as may be specified by the Department to make the Revised Submittal approvable.

(a) The Department will disapprove and will not approve a Revised Submittal with conditions if any changes required previously in a notice of disapproval pursuant to ¶A(3) of this Article were not made in the Revised Submittal or substantive or material modifications are required to make the Revised Submittal acceptable.

(b) In the event the Department disapproves any Revised Submittal or approves a Revised Submittal conditioned upon modifications and ConEd fails to accept the modifications sought by the Department within ten (10) days after its receipt of the Department's written notification, ConEd shall be considered to be in violation of the terms of this Order, without prejudice to ConEd's right to contest such determination in accordance with Article IX [DISPUTE RESOLUTION] of this Order.

6. When the Department approves any Submittal or Revised Submittal, ConEd shall undertake any actions or activities required under or set forth in the approved Submittal or Revised Submittal, pursuant to the time schedule(s) contained therein.

B. Whenever the Department's review or review and comment (but not approval) is provided for under the terms of this Order, including the Appendices attached hereto, with respect to any Submittal, the following provisions will apply:

1. Within sixty (60) days after receipt of a Submittal, the Department may provide ConEd with comments, if any, on the Submittal.

2. ConEd may, in its discretion, modify the Submittal in accordance with the Department's comments, but shall not be deemed to be in non-compliance with this Order if it does not do so.

C. Either the Department or ConEd may request that the other party agree to an extension of the time to submit or comment upon a Submittal or Revised

Submittal. If the other party agrees to the requested extension, such extension will be memorialized in writing by the respective project managers for the Department and ConEd, without the need for a formal modification pursuant to Article XVI [MODIFICATION] of this Order, unless the requested extension, together with any prior extensions, would: (a) postpone a Major Milestone Event by more than thirty (30) days; (b) postpone an Interim Milestone Event by more than sixty (60) days; or (c) postpone a Major or Interim Milestone Event beyond December 31, 1998.

D. With respect to any activities required by this Order the completion of which requires approval by a governmental entity other than the Department ("Other Approval");

1. Each time that ConEd makes a submission or otherwise notifies the Department with respect to such activities, ConEd shall advise the Department of the Other Approval, and shall provide therewith:

(a) its best estimate at that time of how long the process of obtaining the Other Approval may take;

(b) a description of the steps ConEd has taken and proposes to take in order to obtain the Other Approval at the earliest possible time; and

(c) its best estimate at that time of the effect, if any, that any anticipated delay in obtaining the Other Approval may have upon ConEd's commencement or completion of activities governed by this Order.

2. Any schedule established by or pursuant to this Order shall be deemed amended to allow ConEd sufficient time to secure any necessary Other Approval and to require commencement of the activities for which such Other Approval is needed within thirty (30) days after ConEd obtains such Other Approval or within the established schedule, whichever is later, and to allow corresponding additional time periods for commencement and completion of other required activities affected by the issuance of the Other Approval.

3. No formally promulgated Modified Order on Consent will be necessary for an extension due solely to the approval processes of other governmental entities.

4. Whenever the Department determines that an extension to any schedule is warranted pursuant to this Paragraph, the respective project managers for the Department and ConEd will both sign a simple instrument that reflects the extent of the extension.

5. For purposes of this Paragraph, with respect to ConEd's conduct relative to obtaining any Other Approval, ConEd shall be held to the same standard as the standard to which it is held relative to the Department and others, as established by Article VIII [STIPULATED PENALTIES], ¶A and Article X [ACCESS], ¶B of this Order, and a failure to satisfy a governmental entity's requirements for the issuance of any such Other Approval in a timely and good faith manner shall constitute grounds for the Department's refusing to recognize delays occasioned by such governmental entity's approval process as justification for the extension of any

schedules established by this Order or the Appendices annexed hereto; *provided* however, that nothing in this paragraph or this Order shall be construed as obligating ConEd to accede to any requirements, demands or conditions of a governmental entity that are arbitrary, capricious or otherwise unlawful.

ARTICLE VIII. STIPULATED PENALTIES.

A. Failure to Comply Defined.

For purposes of this Article, with respect to activities other than Submittals or Revised Submittals, "fail to comply" or "failure to comply" shall mean the failure by ConEd to perform a specified act in the manner required by this Order by the date required by this Order or any approved work plan, schedule or protocol. With respect to Submittals and Revised Submittals, the term "fail to comply" or "failure to comply" shall mean the failure by ConEd to submit an original or revised document within the time limits set forth in or established pursuant to this Order and submission of a document that is of such poor quality as not to qualify as a good faith submission.

B. Classification of Failure to Comply Events.

The dates established by this Order and the Appendices hereto by which ConEd must take, commence or complete required activities are classified as Major Milestone Events, Interim Milestone Events and Other Events, those which are Major or Interim Milestone Events being designated specifically, all others being Other Events.

1. Each work plan, schedule or, if appropriate, protocol to be submitted by ConEd other than pursuant to Appendix A shall propose one (1) Major Milestone Event per work plan, schedule or protocol and at least one (1) Interim Milestone Event per six-month time period set forth in such work plan, schedule or protocol and may designate other, appropriate compliance dates as Other Events. Such proposed classifications shall be subject to Department approval. As part of its approval of each work plan, schedule or protocol, the Department may in its discretion modify ConEd's proposed classification of Major Milestone, Interim Milestone and Other Events and shall notify ConEd of such modification at the same time that it transmits its notice of approval of such work plan, schedule or protocol. Once the Department approves such work plan, schedule or protocol, the classification of Events as approved or modified by the Department shall become part of the approved work plan, schedule or protocol.

2. With respect to actions to be performed pursuant to Appendix A of this Order:

(a) each submission of the final Audit Report for each of the first nine locations set forth in Appendix A, Attachment 1, Table A-1 shall be a discrete Interim Milestone Event;

(b) each submission of the required compliance schedule for each of the first nine locations set forth in Appendix A, Attachment 1, Table A-1 shall be a discrete Interim Milestone Event;

(c) the submission of the draft Management Systems Evaluation Report shall be a discrete Interim Milestone Event;

(d) submission of the last required final Audit Report shall be a Major Milestone Event;

(e) submission of the last required compliance schedule shall be a Major Milestone Event;

(f) completion of all actions required by the compliance schedules within the time allowed therefor shall be a Major Milestone Event;

(g) submission of the final Management Systems Evaluation Report shall be a Major Milestone Event; and

(h) with respect to the final Audit Reports and compliance schedules submission of which are interim milestone events, in the event that a submittal date is missed, there will be no penalty assessed if ConEd submits that report or schedule and the next one due on or before the submittal date for the subsequent report or schedule.

C. Imposition of Penalties for Failures to Comply.

1. In the event that ConEd fails to comply with a compliance date established by or pursuant to this Order, the following stipulated penalties shall be paid by ConEd:

<u>Event</u>	<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
Major Milestone	Day 1-30	\$ 2,500.00
	Day 31-60	\$ 5,000.00
	Day 61 and thereafter	\$ 10,000.00
Interim Milestone	Day 1-15	\$ 750.00
	Day 16-30	\$ 1,000.00
	Day 31-60	\$ 1,500.00
	Day 61 and thereafter	\$ 3,000.00
Other	Day 1-30	\$ 250.00
	Day 31-60	\$ 500.00
	Day 61 and thereafter	\$ 1,000.00

2. Penalties begin to accrue on the day that failure to fulfill any obligation required under this Order occurs, and shall continue to accrue until ConEd either performs the required activities or completes corrective action satisfactory to the Department. In the event that the Department determines that ConEd has failed to comply with any term of this Order or any approved work plan, schedule or protocol, the Department will serve upon ConEd a Notice of Failure to Comply which will set forth the nature of the failure to comply and the calculation of the stipulated penalties due. Within twenty-one (21) days after receipt of a Notice of Failure to Comply, ConEd shall deliver the full stipulated penalty amount due to the Department, unless ConEd pursues its rights to contest the penalty assessment as

described hereafter in Article IX [DISPUTE RESOLUTION] of this Order. In the event that ConEd does not pay the stipulated penalty within such 21-day period and does not contest the penalty assessment, then this Order together with the Notice of Failure to Comply may be filed and enforced as a civil judgment for the total penalty amount set forth in the Notice of Failure to Comply.

3. Additional stipulated penalties may be assessed by the Regional Director (Region 2) in accordance with the provisions of Article IX [DISPUTE RESOLUTION], ¶C(5) of this Order.

ARTICLE IX. DISPUTE RESOLUTION.

A. Applicability and Effect.

If ConEd either fails in a Revised Submittal to address the Department's comments to the Department's satisfaction, or refuses to undertake or complete any measures required by the Department pursuant to this Order, then ConEd shall be in violation of this Order unless it first has invoked the dispute resolution mechanism established by this Article or commenced a proceeding pursuant to Article 78 of the Civil Practice Law and Rules ("Article 78"); *provided, however,* that invoking the provisions of this Article shall not toll or suspend either ConEd's obligations or the accrual of stipulated penalties; *and further provided,* that ConEd may not both invoke the procedure established by ¶C of this Article and make use of Article 78. If the procedure established by ¶C of this Article is invoked,

ConEd shall comply with the final determination of the Department, failing which it shall be in violation of this Order.

B. Parties to Meet and Confer.

In the event that a dispute arises between ConEd and the Department with respect to any matter specified in ¶A of this Article or with respect to other matters relating to ConEd compliance with the requirements of this Order, the parties shall confer and endeavor in good faith to resolve any differences that may exist. ConEd shall request such a meeting by serving a written request therefor in the manner provided by Article XVII [COMMUNICATIONS] ¶(B)(1) of this Order within five (5) days of ConEd's receipt of the Department's Notice of Noncompliance, Disapproval, or Violation or other Department Notice or Demand that ConEd wishes to dispute. The parties shall attempt to meet and confer within five (5) days of the Department's receipt of ConEd's written request. If, after conferring together in good faith, the parties are unable to resolve such differences, the matter shall be resolved in accordance with ¶C of this Article or ConEd may commence an Article 78 proceeding, at its option.

C. Procedure for Non-Article 78 Resolution if Parties Cannot Agree.

1. Within five (5) business days after the parties have met and conferred as provided by ¶B of this Article, ConEd shall make a written request for an opportunity to meet with the Regional Director of Region 2 and other involved Department staff to discuss the surrounding circumstances by transmitting same to

the persons listed in Article XVII [COMMUNICATIONS], ¶B(1) and (2) of this Order. Such request shall include a copy of the written Notice or Demand that is being challenged together with an affidavit setting forth with specificity the basis of the challenge. The Regional Director will consider any information presented by ConEd in resolving the dispute.

2. Department Staff may submit a written response to the petition to the Regional Director within fifteen (15) business days of its receipt of the petition, and will transmit a copy thereof to ConEd.

3. The Regional Director will meet with ConEd and Staff representatives as soon as practicable after receipt of the Staff's response to ConEd's written request, but in no event later than ten (10) business days after receipt of the response and consider any information presented by ConEd and Staff in resolving the dispute. The Regional Director will notify ConEd and Staff of the decision in writing within twenty (20) days of such meeting.

4. Stipulated penalties shall be calculated from the day the failure to comply first occurred unless ConEd prevails with respect to the dispute, in which case, no stipulated penalties shall become due. In the event that ConEd does not prevail, but the Regional Director finds that the petition was submitted in good faith, the Regional Director may: (1) find that the assessment of stipulated penalties was tolled from the initial date of ConEd's failure to comply with the terms of this Order to the date of ConEd's receipt of the Regional Director's decision; or (2) reduce the amount of stipulated penalties otherwise due and payable pursuant to Article VIII

[STIPULATED PENALTIES], ¶C(1) of this Order. For purposes of this ¶C, "good faith" shall mean that ConEd had a reasonable prospect of success on the substantive merits.

5. In the event that the Regional Director finds that ConEd's request to meet (a) was not made in good faith in the first instance, (b) was wholly without merit or (c) was otherwise frivolous, the Regional Director may double the amount of stipulated penalties otherwise due in accordance with the schedule set forth in Article VIII [STIPULATED PENALTIES], ¶C(1) of this Order for the period between the date of failure to comply and the date of compliance.

6. The determination by the Regional Director will be final and binding upon ConEd in the same manner as an Order by the Commissioner and will be deemed the equivalent of a civil judgment after trial for the amount determined to be due, and may be filed and enforced as a judgment pursuant to Civil Practice Law and Rules Article 50, *et seq.*, for said amount without the need for any further proceedings whatsoever.

7. Having elected to invoke the procedure established by this paragraph, ConEd will have waived with respect to the particular matter in dispute its right to judicially challenge and any right it may otherwise have to commence a proceeding pursuant to Article 78 for the purpose of nullifying or modifying such determination and Order.

ARTICLE X. ACCESS.

A. Department Access to Facilities.

1. Entry. Upon presentation of appropriate Department credentials, any duly designated officer, employee, consultant, contractor or agent of the Department shall be permitted by ConEd to enter upon any of ConEd's facilities or areas in the vicinity of any of ConEd's facilities which may be under the control of ConEd, and any areas under ConEd's control necessary to gain access thereto, during all hours of operation, for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary for ascertaining ConEd's compliance with the provisions of this Order.

2. Health and safety training, safety apparel and safety equipment. The provisions of §§D and E of Article VI [ENVIRONMENTAL MONITOR] of this Order shall apply to Department officers, employees, consultants, contractors and agents seeking to enter ConEd facilities and sites.

B. ConEd Entry Onto Property Controlled by Others

ConEd shall use best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, and approvals required to fulfill its obligations under this Order. If any access required to perform this Order is not obtained despite best efforts, ConEd shall promptly so notify the Department in writing, and shall include in that notification a summary of the steps that ConEd has taken to attempt to obtain

access. Thereafter, the Department will, as it deems appropriate, assist ConEd in obtaining access.

ARTICLE XI. FORCE MAJEURE.

ConEd shall not suffer any penalty under this Order, or be deemed to be in violation hereof or be subject to any proceeding or action, if ConEd's compliance with any requirements hereof is rendered impossible by a natural event, war, strike, work stoppage, riot or other catastrophe as to which negligence or misconduct on the part of ConEd was not the proximate cause; *provided, however*, that ConEd shall make its best effort to comply nonetheless and shall, within one business day, notify the office of the Regional Director by telephone and the Department in writing, pursuant to the communications provision of this Order, after it obtains knowledge of any such condition or event and request an appropriate extension or modification of this Order.

ARTICLE XII. FAILURE, DEFAULT AND VIOLATION OF ORDER.

The failure of ConEd to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.

ARTICLE XIII. SUMMARY ABATEMENT.

The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers pursuant to Section 71-0301 of the ECL.

ARTICLE XIV. INDEMNIFICATION.

ConEd shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by ConEd, its trustees, officers, employees, servants, agents, successors or assigns.

ARTICLE XV. EFFECTIVE DATE.

The effective date of this Order on Consent shall be the date that it is signed by the Commissioner. The Department shall serve ConEd with a fully executed copy of this Order on Consent by Federal Express or comparable overnight mail delivery service as soon as practicable after this Order on Consent has been signed by the Commissioner.

ARTICLE XVI. MODIFICATION.

If ConEd desires that any provision of this Order be changed, ConEd shall make timely written application therefor to the Commissioner, setting forth

reasonable grounds for the relief sought. For purposes of this paragraph, "timely" shall mean that the written application is made as soon as reasonably possible after ConEd identifies the grounds for such relief. The Commissioner shall have absolute discretion but will not arbitrarily withhold consent to the requested change and will respond promptly to the request. A formally promulgated Modified Order will not be required for a modification to any schedule under this Order that is covered by the provisions of Article VII [SUBMITTAL REVIEW AND APPROVAL], ¶D of this Order, or that otherwise modifies any schedule under this Order and does not: (a) postpone a Major Milestone Event by more than thirty (30) days or (b) postpone an Interim Milestone Event by more than sixty (60) days; or (c) postpone a Major or Interim Milestone Event beyond December 31, 1998.

ARTICLE XVII. COMMUNICATIONS.

A. All communications required by this Order to be made between the Department and ConEd shall be made in writing and transmitted by United States Postal Service, Return Receipt Requested, or hand-delivered to the addressees in ¶¶B and C hereunder. Alternatively, Federal Express, Airborne Express or a comparable courier service may be utilized.

B. Communication to be made from ConEd to the Department pursuant to this Order shall be made as follows:

1. One copy to the Division of Environmental Enforcement, Room 613, 50 Wolf Road, Albany, New York 12233-5500. Attention: Carl G. Dworkin, Esq; and

2. Four copies to the New York State Department of Environmental Conservation, 1 Hunters Point Plaza, 4740 21st Street, Long Island City, New York 11101-5407. Attention: Regional Director; and

3. With respect to communications regarding audits conducted pursuant to Article III [COMPREHENSIVE ENVIRONMENTAL AUDIT PROGRAMS] and Appendix A of this Order only, one copy to Joseph M. Kowalczyk, Esq, Division of Environmental Enforcement, Room 613, 50 Wolf Road, Albany, New York 12233-5500.

C. Communication to be made from the Department to ConEd pursuant to this Order shall be made as follows:

1. One copy to Garrett E. Austin, Esq., Consolidated Edison Co. of New York, Inc., Room 1800, 4 Irving Place, New York, New York 10003; and

2. Four copies to Robert T. Keegan, Director, Water and Waste Management, Environmental Affairs, Consolidated Edison Co. of New York, Inc., 4 Irving Place, New York, New York 10003.

D. The Department and ConEd respectively reserve the right to designate other or different addressees on written notice to the other.

ARTICLE XVIII. RESERVATION OF RIGHTS.

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department may have against ConEd with respect to investigatory, remedial or corrective action or with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances, petroleum, or constituents of either at or from ConEd's facilities or areas in the vicinity of said facilities;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department may have against anyone other than ConEd, its officers, trustees, agents, servants, employees, successors and assigns;

C. The Department's right, to the extent provided for by law, to enforce this Order against ConEd, its officers, trustees, agents, servants, employees, successors or assigns in the event that ConEd fails to fulfill any of the terms or provisions hereof; and

D. Except as specifically provided in this Order, any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands

whatsoever that the Department may have against ConEd for any alleged violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder.

ARTICLE XIX. RELEASE.

A. This Consent Order shall be in full settlement of all civil and administrative claims and liabilities asserted by Staff against ConEd in the Complaint that initiated this proceeding and all that could be asserted by Staff against ConEd, its trustees, officers, employees, successors and assigns for any violation of the ECL, the Navigation Law or any rules or regulations promulgated pursuant to the authority of either or any permits, licenses or certificates issued by the authority of either arising from events that occurred at any time prior to the effective date of this Order, except for those events or claims described in ¶B of this Article.

B. This Consent Order shall not be construed as being in settlement of any of the following claims or liabilities that could be asserted by Staff:

1. those based upon events of which Staff did not have knowledge as of the effective date of this Order. For purposes hereof, "knowledge" shall mean that the person responsible for maintaining official Department records relative to incidents of the nature constituting the alleged violation or investigating events and violations of such nature had actual notice of the event through written or documented verbal means;

2. those legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department

may have against ConEd with respect to any investigatory, remedial or corrective action required or with respect to any claims for natural resources damages resulting from the release or threatened release at any time prior to the effective date of this Order of hazardous substances, petroleum, or constituents of either or discharges in excess of permit or other obligatory limits at or from ConEd's facilities or areas in the vicinity of said facilities;

3. those based upon events that occurred at any time prior to the effective date of this Order that are determined by the Department to have been committed with any of the culpable mental states defined in Penal Law §15.05 or were caused by knowing, intentional or reckless conduct or gross negligence. Such events include, but are not limited to, ones similar to the events resolved by the parties by Order on Consent in DEC Case No. W2-0701-94-07;

4. those based upon discharges of radioactive wastewater released from the fuel pools and pumped from the Indian Point Nuclear Power Plant complex into the Hudson River; or

5. those based upon events occurring after the effective date of this Order.

ARTICLE XX. BINDING EFFECT OF ORDER.

The provisions of this Order shall inure to the benefit of and be binding upon the Department and ConEd, its agents, employees, successors and assigns and all persons, firms, and corporations acting subordinate thereto.

ARTICLE XXI. FORMAL TERMS.

The provisions hereof shall constitute the complete and entire Order between ConEd and the Department. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound, in accordance with the provisions of Article XVI [MODIFICATION] of this Order. No informal oral or written advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by ConEd shall be construed as relieving ConEd of its obligations to obtain such formal approvals as may be required by this Order.

DATED: *Nov*, 1994

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION


LANGDON MARSH
COMMISSIONER

CONSENT BY RESPONDENT

Consolidated Edison Company of New York, Inc. hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: J. Bowring Woodbury II
Senior VP & General Counsel
Title: _____
Date: 11/3/94

CONNECTICUT)
STATE OF ~~NEW YORK~~) ss:
COUNTY OF FAIRFIELD)

On this 3rd day of November, 1994, before me personally came T. BOWRING WOODBURY, II....., to me known, who being duly sworn, did depose and say that he is the Senior Vice President & General Counsel..... of Consolidated Edison Company of New York, Inc., described in and which executed the foregoing instrument.

Gloria McMillan-Burke
Notary Public
Gloria McMillan-Burke
My Commission Expires 2-28-98



APPENDIX A:

COMPREHENSIVE ENVIRONMENTAL AUDIT PROGRAMS

A. Required Programs

Con Ed shall conduct the following audit programs for its facilities and operations in accordance with the provisions of this Appendix and Attachments 1 and 2:

- (i) Compliance Audit; including a future self-audit program;
- (ii) Environmental Management Systems Evaluation;
- (iii) Air Pollution Release Assessment; and
- (iv) Waste Reduction Evaluation.

The Compliance Audit Program ("CAP") and Environmental Management Systems Evaluation (EMSE) shall be performed for Con Ed by one or more independent, third-party experts acceptable to the Department.

Con Ed shall give the required third-party expert for the CAP ("Auditor") and EMSE ("Consultant") its full cooperation in all matters relating to the performance of the CAP and EMSE. Such cooperation shall include, but not be limited to, authorizing the Auditor and Consultant to examine any and all Con Ed records and other materials that may be relevant to the issues within the scope of the CAP and EMSE and providing to the Auditor and Consultant, upon request, access to any and all of its employees.

B. Compliance Audit Program

1. Proposed Auditor Candidates

Con Ed shall identify independent experts who are willing to serve as the Auditor and request them to prepare documents describing their qualifications ("qualification statements") for performing the CAP. Within 60 days of the effective date of the Order, Con Ed shall select proposed candidates from among the experts who prepared such statements and shall submit up to five (5) proposed candidates' names to the Department for its review and approval, together with their qualification statements. Con Ed, at its discretion, may also submit to the Department for review and approval the names (and qualification statements) of up to five (5) independent experts who have experience in conducting compliance audits with respect to New York City environmental laws and regulations and who would be retained by the Auditor for the CAP as a subcontractor to assist in the performance of those portions of the CAP relating to compliance with those

requirements. Within 30 days after its receipt of such submittal, the Department will provide Con Ed with written notification of its approval or disapproval of the submittal.

In the event that the Department does not approve at least three (3) of the proposed Auditor candidates or at least two (2) of the proposed Auditor subcontractor candidates, Con Ed shall within ten (10) days after receipt of the Department's notice of disapproval submit for the Department's review and approval the names of up to five (5) additional Auditor candidates and/or up to three (3) additional Auditor subcontractor candidates, together with their qualification statements.

2. Auditor Approval Criteria

The Department has the right to interview Con Ed's proposed Auditor and Auditor subcontractor candidates before approving them. The Department may approve or disapprove a proposed candidate based upon a determination of whether the candidate's qualifications, training, and capability are well suited for carrying out the activities required by this Order in a satisfactory manner. In making that determination, the Department may consider factors including, but not limited to, the following:

- (i) Technical training and experience appropriate to the scope of the CAP (or portions thereof for which the candidate has been proposed by Con Ed.)
- (ii) Knowledge and understanding of basic audit theory and procedures and the experience to apply them to the CAP.
- (iii) Working knowledge of the laws, regulations, standards, and criteria applicable to the compliance assessments called for by the CAP .
- (iv) General familiarity with the type of operations to be reviewed and the issues likely to be encountered within the scope of the CAP .
- (v) The previous experiences of the Department and other government agencies with the candidate.

3. Selection of Auditor

Within 10 days after its receipt of the Department's notice of approval of three (3) or more of Con Ed's proposed Auditor candidates and two (2) or more of Con Ed's proposed Auditor subcontractor candidates, Con Ed shall solicit proposals for the performance of the CAP from some or all of the approved Auditor candidates. Within one-hundred twenty (120) days of Con Ed's receipt of such notice of approval, Con Ed shall retain one of the approved Auditor candidates to serve as the Auditor for the CAP. Con Ed shall promptly provide the Department with Auditor's name and a copy of its Technical Proposal and the

name of the approved subcontractor candidate, if any, that the Auditor has retained to assist in the performance of the portions of the CAP relating to compliance with applicable New York City environmental requirements.

4. Scope

The CAP will assess Con Ed's compliance with applicable federal, New York State, and New York City statutory and regulatory environmental requirements at the locations ("Audit Locations") specified in the scope of work set forth in Attachment 1, "Scope of Work For Compliance Audit Program". Con Ed shall require the Auditor to perform the required compliance audits and prepare the required Audit Reports in accordance with the provisions of this paragraph and Attachment 1, Scope of Work For Compliance Audit Program. ("Scope of Work").

5. Work Plan

Con Ed shall require that within thirty (30) days after the initial meeting provided for in the attached Scope of Work, the Auditor shall submit to Con Ed for its review and to the Department for its review and approval a Work Plan setting forth the procedures that the Auditor (and its subcontractor, if any) will follow to carry out and complete the CAP. The Work Plan shall contain a schedule for performing all audits and other tasks specified in the attached Scope of Work and/or required under the Work Plan and shall include the names of the persons who will perform those tasks. The schedule shall provide for the completion of all such audits and tasks, other than the unannounced physical follow-up inspections provided for in the attached Scope of Work, within twenty-one (21) months after the Department approves the Auditor's written audit protocols as specified below. The unannounced physical follow-up inspections shall be completed within twenty-four (24) months after the Department approves the Auditor's written protocols.

In the event that the Department disapproves the Work Plan, the Department will provide written notification to Con Ed and the Auditor which will state the reasons for such disapproval with sufficient particularity so as to allow any deficiency to be remedied. Con Ed shall require that the Auditor revise the Work Plan in the manner specified in the Department's notice and submit the revised Work Plan to Con Ed for its review and to the Department for its review and approval in accordance with Article VII of the Order.

6. Audit Protocols

Con Ed shall require that within 30 days after the Department approves the Work Plan, the Auditor submit to Con Ed for its review and to the Department for its review and approval the audit protocols that the Auditor (and its subcontractor, if any) proposes using for the performance of the required compliance audits. The

protocols shall include the minimum steps needed to assess compliance with all applicable statutory and regulatory environmental requirements specified in the attached Scope of Work and shall include references to all such requirements.

In the event that the Department disapproves the audit protocols, the Department will provide written notification to Con Ed and the Auditor which will state the reasons for such disapproval with sufficient particularity so as to allow any deficiency to be remedied. Con Ed shall require that the Auditor revise the audit protocols in the manner specified in the notice and submit the revised audit protocols to Con Ed for its review and to the Department for its review and approval in accordance with Article VII of this Order.

The Auditor shall not begin the required compliance audits at the Audit Locations specified in the attached Scope of Work until its audit protocols have been approved by the Department and shall use the approved audit protocols to conduct the required compliance audits.

7. Compliance Audit Reports

Con Ed shall require that, within thirty (30) days after completion of the compliance audit for an Audit Location, the Auditor submit a draft Audit Report for the location to the Department and Con Ed for review and comment. The Audit Report shall contain:

- i) A description of the scope and objectives of the compliance audit;
- ii) A summary of the tasks undertaken by and the procedures followed by the Auditor to accomplish the compliance audit;
- iii) A list of all instances of known or suspected non-compliance with federal and state environmental laws, rules and regulations and permits;
- iv) A certification by the Auditor that the compliance audit was performed in accordance with the requirements of this paragraph, the attached Scope of Work, and prevailing practices of environmental auditing and that the Auditor set forth in the Audit Report all instances of known or suspected non-compliance with such laws, rules, regulations and permits that the Auditor discovered during the compliance audit; and
- v) Recommendations for corrective action for each instance of non-compliance cited, with a ranking as to whether the recommended actions are considered to be of high, medium, or low priority and, if appropriate, recommended immediate or short-term and long-term measures or permanent solutions.

If requested by the Department or Con Ed, the Auditor shall meet with Department Staff and Con Ed within fifteen (15) days after the Auditor's submittal of the draft Audit Report to discuss the draft report. Within thirty (30) days after the Auditor's submittal of the draft Audit Report, the Department will submit to Con Ed and the Auditor written comments specifying the deficiencies, if any, to be addressed in the final Audit Report, and Con Ed will submit to the Department and the Auditor written comments specifying any portions of the draft report that Con Ed believes are inaccurate. Con Ed shall require that within sixty (60) days of the Auditor's submittal of the draft report the Auditor revise the draft report to address the deficiencies and inaccuracies specified in any written comments received during the 30-day comment period and submit a final Audit Report to Con Ed for its review and to the Department for its review and approval.

8. Compliance Schedules

Within sixty (60) days after the Auditor's submittal of the final Audit Report for an Audit Location specified in the attached Scope of Work, Con Ed shall submit to the Department for its review and approval a schedule for achieving and demonstrating compliance with all instances of known or suspected non-compliance disclosed in the final Audit Report. This compliance schedule shall include a detailed time table for achieving and demonstrating compliance for each such instance of non-compliance. If Con Ed is required to take corrective action for any such instance of non-compliance under another provision of this Order, the compliance schedule shall specify such provision and refer to any corrective action schedule that the Department approved for the instance of non-compliance pursuant to that provision. Upon the Department's approval, the compliance schedule shall become an enforceable provision of the Order. Con Ed shall comply with the provisions of the approved compliance schedule, pursuant to the time table contained therein.

9. Limited Immunity

The Department shall not seek any civil or administrative penalty for any instances of non-compliance disclosed in a final Audit Report, provided that, Con Ed either corrected such non-complying conditions in the manner specified by law, or will correct such conditions in accordance with the approved compliance schedule described above or any other provision or schedule of the Order. The limited immunity granted herein shall not apply to those circumstances in which:

- (i) Con Ed has a legal obligation, independent of the Order, to report such non-compliance to the Department under any law, regulation, permit, or administrative order;
- (ii) Con Ed knowingly or intentionally violates the provisions of an environmental law, regulation, permit, or administrative order;

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- (iii) The non-compliance is the result of Con Ed's recklessness or gross negligence; or
 - (iv) The Department, independent of the compliance audit or Audit Report, discovers such non-compliance.

10. Confidentiality

The Audit Reports may contain trade secrets which if disclosed would cause substantial injury to Con Ed's competitive position. Within 15 days after the Auditor's submittal of a draft or final Audit Report, Con Ed shall identify any portions of the report that it claims contain protected trade secrets. Unless there is an unresolved dispute over the contents of a draft Audit Report and/or final Audit Report for any Audit Location, the final Audit Report for the location shall supersede the draft Audit Report and the draft Audit Report shall be returned to Con Ed by the Department.

C. Compliance Self-Auditing Program

Within twenty-four (24) months after the effective date of the Order, Con Ed shall submit to the Department for its review and approval a Work Plan for implementing an environmental compliance self-auditing program for the following types of facilities during the five (5) year period commencing on the date that the CAP is completed:

- (i) electric generating stations and steam plants;
- (ii) gas turbine facilities;
- (iii) solid and hazardous waste transfer facilities;
- (iv) barges and tankers;
- (v) dielectric cable system cooling plants and pressurization plants;
- (vi) PCB storage facilities;
- (vii) MOSF pipelines;
- (viii) dielectric cable system transmission and distribution lines;
- (ix) steam operations facilities;
- (x) gas operations facilities;
- (xi) MOSF terminals and PBS facilities;
- (xii) corporate transportation and stores facilities;
- (xiii) administrative office buildings;
- (xiv) service centers;
- (xv) flush truck facilities;
- (xvi) major construction sites;
- (xvii) major and unit electric substations; and
- (xviii) facilities audited as part of a required compliance audit performed pursuant to the CAP.

The audits required under the Work Plan shall be designed to assess compliance with the statutory and regulatory environmental requirements within the attached Scope of Work for the CAP and shall be conducted by an independent consultant or by independent audit staff of Con Ed not responsible to production management. Each facility audited as part of the required compliance audit for an Audit Location under the CAP shall be audited at least once pursuant to the self-auditing program. Con Ed's Work Plan shall specify the criteria that will be used to determine the priority and frequency of the compliance self-audits for these facilities and the other types of facilities within the scope of the self-auditing program and the protocols for conducting the self-audits.

Reports of the results of such internal audits ("Self-Audit Statements") shall be furnished to the appropriate environmental official within Con Ed and to the manager of the audited facility. Within thirty (30) days after the completion of the Self-Audit Statement for each facility (or group of facilities if so provided in the approved Work Plan), Con Ed shall submit to the Department a report summarizing all incidents of non-compliance identified in the Self-Audit Statement and Con Ed's proposed steps to correct any continuing incidents of non-compliance and to prevent future incidents of non-compliance.

The limited immunity granted to Con Ed in paragraph B (9) above shall not apply to such self-auditing. The Department may take such action as it deems appropriate with respect to any incidents of non-compliance disclosed pursuant to this paragraph.

D. Environmental Management Systems Evaluation

1. Proposed Consultant Candidates

Within 90 days after the effective date of the Order, Con Ed shall identify independent experts who are willing to serve as the Consultant for the EMSE and shall request them to prepare qualification statements for the performance of the EMSE. Within 150 days after the effective date of the Order, Con Ed shall select proposed Consultant candidates from among the experts who prepared such statements and shall submit the names of up to five (5) such candidates to the Department for its review and approval, together with their qualification statements. Con Ed may propose the same expert as both an Auditor candidate and a Consultant candidate, provided that, the expert is willing to perform both of these programs and has prepared a qualification statement for each program. Within 30 days after its receipt of such submittal, the Department will provide Con Ed with written notification of its approval or disapproval of the submittal.

In the event that the Department does not approve at least three (3) of Con Ed's proposed Consultant candidates, Con Ed shall within ten (10) days after receipt of the notice of disapproval, submit the names of up to five (5) additional Consultant candidates (and their qualification statements) to the Department for its review and approval.

2. Approval Criteria

The Department has the right to interview Con Ed's proposed Consultant candidates before approving them. The Department may approve or disapprove such a proposed candidate based upon a determination that the candidate's qualifications, training and capability are well suited for carrying out the activities required by this Order in a satisfactory manner. In making that determination, the Department may consider factors including, but not limited to, the following:

- (i) Technical training and experience appropriate to the scope of the EMSE.
- (ii) Knowledge and understanding of basic audit theory and procedures and the experience to apply them to such program.
- (iii) Working knowledge of the laws, regulations, standards, and criteria applicable to the management system evaluations called for by such program.
- (iv) General familiarity with the type of operations to be reviewed and the issues likely to be encountered within the scope of such program.
- (v) The previous experiences of the Department and other government agencies with the candidate.

3. Selection of Consultant

Within 10 days after its receipt of the Department's notice of approval of three (3) or more of Con Ed's proposed Consultant candidates, Con Ed shall solicit proposals for the performance of the EMSE from some or all of the approved Consultant candidates. Within one-hundred twenty (120) days after receipt of the notice of approval of three (3) or more Consultant candidates, Con Ed shall retain one of them to serve as the Consultant for the EMSE. Con Ed shall promptly provide the Department with the Consultant's name and a copy of its Technical Proposal.

4. Scope

Con Ed shall require the Consultant to conduct comprehensive environmental management systems evaluations ("evaluations") for each Con Ed organization and location specified in Attachment 2, based upon which the Consultant shall prepare a draft and final Management Systems Evaluation Report.

The required evaluations shall be conducted and the required reports shall be prepared in accordance with the provisions of this paragraph and the scope of work set forth in Attachment 2 ("Scope of Work").

5. Work Plan

Con Ed shall require that within thirty (30) days after the initial meeting provided for in the attached Scope of Work, the Consultant submit to the Department and Con Ed for Con Ed's review and the Department's review and approval a Work Plan setting forth the procedures that the Consultant will follow to carry out and complete the EMSE. The Work Plan shall contain a schedule for performing all tasks specified in the attached Scope of Work and/or required in the Work Plan and shall include the names of the Consultant employees who will perform those tasks. The schedule shall provide for the completion of all such tasks within 18 months after the Department approves the Consultant's evaluation protocols as specified below.

If the Department disapproves the Work Plan, it will provide written notice to Con Ed and the Consultant which states the reasons for such disapproval with sufficient particularity so as to allow any deficiency to be remedied. Con Ed shall require the Consultant to revise the Work Plan in the manner specified in the notice and to submit the revised Work Plan to Con Ed for its review and to the Department for its review and approval in accordance with Article VII of this Order.

Con Ed shall require the Consultant to carry out the EMSE in the manner and within the times specified in the approved Work Plan.

6. Evaluation Protocols

Con Ed shall require that within thirty (30) days after the Department approves the Work Plan, the Consultant submit to Con Ed for its review and to the Department for its review and approval the protocols that the Consultant proposes using for the performance of the required evaluations. The protocols shall include the minimum steps required to evaluate each topic area specified in the attached Scope of Work.

If the Department disapproves the protocols, it will provide Con Ed and the Consultant with written notice stating the reasons for such disapproval with sufficient particularity so as to allow any deficiency to be remedied. Con Ed shall require the Consultant to revise the protocols in the manner specified in the notice and submit the revised protocols to Con Ed for its review and to the Department for its review and approval in accordance with Article VII of this Order.

Con Ed shall require the Consultant to use the approved protocols to conduct the required evaluations.

7. Management Systems Evaluation Report

Con Ed shall require the Consultant to submit a draft Management Systems Evaluation Report to Con Ed and to the Department for review and comment within 60 days after it has completed the required evaluations for all organizations and locations specified in the attached Scope of Work. The Report shall provide a complete description of the environmental management programs and systems in place within the organizations and at the locations reviewed, set forth the findings of the environmental management systems evaluations specified in the attached Scope of Work, and recommend initiatives for remedying any problems identified. The report shall include:

- (i) A description of the scope and objectives of the required evaluations;
- (ii) A summary of the tasks undertaken by and the procedures followed by the Consultant to accomplish the required evaluations;
- (iii) A general description of the Con Ed systems, operations, policies, and practices related to the attached Scope of Work;
- (iv) An evaluation of Con Ed's environmental management systems and recommendations for improving such systems; and
- (v) A listing of the management systems changes that Con Ed has implemented or plans to implement to better achieve compliance with applicable statutory and regulatory environmental requirements.

If requested by the Department or Con Ed, the Consultant shall meet with Department staff and Con Ed within thirty (30) days after the Consultant's submittal of the draft Management Systems Evaluation Report to discuss the report. Within ninety (90) days after the submittal of the draft Management Systems Evaluation Report, the Department will submit to Con Ed and the Consultant written comments specifying any deficiency to be addressed in the final Management Systems Evaluation Report, and Con Ed will submit to the Department and the Consultant written comments specifying any portions of the draft report that Con Ed believes are inaccurate or deficient. Con Ed shall require the Consultant to submit, within one hundred twenty (120) days after the Consultant's submittal of the draft report, a final Management Systems Evaluation Report that addresses the deficiencies and inaccuracies specified in any written comments received to Con Ed for its review and to the Department for its review and approval.

E. Air Pollution Release Assessment Program

Con Ed shall make an assessment of its emissions of air pollutants from the boilers at its electric and steam generating stations. The assessment shall be made on the basis of air pollutant emissions rates per million Btu heat input for the fuels used at each boiler (natural gas and oil). For the purposes of this paragraph, the term "air pollutants" means SO₂, NO_x, CO, particulate matter (PM), and hazardous air pollutants as identified in Section 112(B) of the Clean Air Act.

The emissions assessment for SO₂, NO_x, CO, and PM shall be based on stack test results from Con Ed's electric and steam generating boilers. The emissions assessment for hazardous air pollutants shall be based on the results of stack tests conducted at Con Ed's Arthur Kill Station or at other steam/electric generating units of similar design as part of the Power Plant Integrated Systems Chemical Emissions Studies ("PISCES") Program sponsored by the United States Department of Energy and the Electric Power Research Institute.

Within sixty (60) days after the effective date of the Order, Con Ed shall submit to the Department for its review and approval a report setting forth the results of the emissions assessments. The report shall present the following information for each boiler:

- (i) monitored or calculated emission rates for SO₂, NO_x, CO, PM, and PISCES Program hazardous air pollutants when burning natural gas;
- (ii) monitored or calculated emission rates for SO₂, NO_x, CO, PM, and PISCES Program hazardous air pollutants when burning No. 6 oil with a sulfur content of 0.3% or less by weight;

F. Waste Reduction Evaluation

Con Ed shall undertake a review of its generation of hazardous waste, industrial non-hazardous waste, and refuse waste streams at the Audit Locations listed in Attachment 1 and perform a Waste Reduction Evaluation which evaluates opportunities to reduce the generation of these wastes. The primary purpose of the Waste Reduction Evaluation is to identify all technically feasible and economically practicable options for reducing or eliminating the waste streams subject to the Evaluation. "Technically feasible and economically practicable" means a specific determination that:

- (a) the technology or process change to achieve reductions currently exists, or is under development and is reasonably expected to be available and effective and is based upon sound engineering and scientific principles and practices and will not negatively impact personnel health, process safety or product safety or quality; and

(b) the net costs of the change, determined by considering costs and savings realized from the reduction in the generation of the wastes, and associated regulatory program fees are consistent with the normal economic payback criteria of the facility and such criteria are consistent with generally accepted industry principles and practices. The facility may also consider the timing, compliance requirements and cost of standards to be imposed under provisions of federal and state law when assessing economic practicability.

The results of the Evaluation shall be included in a report that: (1) describes the process that generates each waste stream; (2) estimates the quantities of waste generated; (3) describes the steps that have previously been taken to reduce the quantities of waste generated; (4) evaluates the technical feasibility and cost effectiveness of measures to either eliminate, reduce, recycle or beneficially reuse the components of those waste streams, and (5) sets forth goals for further reductions according to the following hierarchy of waste management practices:

- (i) The generation of waste is to be reduced or eliminated to the maximum extent practicable;
- (ii) Waste that continues to be generated or released is to be recovered, reused or recycled on-site to the maximum extent practicable;
- (iii) Waste that continues to be generated or released is to be recovered, reused or recycled off-site to the maximum extent practicable;
- (iv) Detoxification, treatment or destruction technologies are to be utilized for industrial hazardous waste that cannot be reduced, recovered, reused or recycled; and
- (v) Land disposal of industrial hazardous waste, except treated residual posing no significant threat to the public health or to the environment, should be phased out as it is the least preferable method of industrial hazardous waste management.

The Waste Reduction Evaluation report shall be submitted to the Department no later than 18 months after the effective date of this Order.

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ATTACHMENT 1 TO APPENDIX A:

SCOPE OF WORK FOR COMPLIANCE AUDIT PROGRAM

A. PROGRAM OBJECTIVE AND SCOPE

A Comprehensive Environmental Compliance Audit shall be conducted at each Con Ed location listed in Table A-1. The objective of the audit at each such location is to assess the location's compliance with all applicable federal, state, and local environmental requirements and to identify and document any violations occurring during the period January 1, 1994 through the last day of the audit conducted at the location.

The audits shall assess compliance with the applicable requirements of the following federal, New York State, and local laws (and the rules, regulations, permits, licenses, and administrative orders issued under these laws):

- Federal laws
 - Resource Conservation and Recovery Act
 - Clean Water Act
 - Clean Air Act
 - Toxic Substances Control Act (related to PCBs)
 - Federal Insecticide, Fungicide, and Rodenticide Act
 - Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act
 - Emergency Planning and Community Right-to-Know Act
 - Oil Pollution Prevention Act
- New York State laws
 - Environmental Conservation Law
 - Article 12 of the Navigation Law
- Local laws
 - Title 24 of the Administrative Code of the City of New York

In addition, unannounced physical follow-up inspections shall be conducted at ten percent of the locations listed in Table A-1. These unannounced follow-up inspections shall be conducted at a location after the audit has been completed. The timing of the inspections and the selection of the specific locations at which they will be conducted shall be mutually agreed to by the Auditor and the New York State Department of Environmental Conservation (DEC or Department) and shall not be disclosed to Con Ed by the Auditor.

B. INITIAL MEETING

After the Auditor has been retained by Con Ed, DEC will schedule a meeting of representatives of the Auditor, DEC, and Con Ed to review the Auditor's technical proposal and to discuss the Auditor's preparation of the Work Plan required in Section C below.

C. COMPLIANCE AUDIT PROGRAM WORK PLAN

1. Criteria

Within 30 days after the initial meeting provided for in Section B above, the Auditor shall submit a Work Plan to the DEC and Con Ed for their review and for DEC's approval. The Work Plan shall set forth the procedures the Auditor will follow so that upon completion of the audit at each location listed in Table A-1, the Auditor will be able to:

(a) Evaluate the location's regulated facilities, operations, equipment, activities, plans, records, and procedures with respect to the applicable provisions of the statutory and regulatory requirements identified in Section A above; and

(b) Prepare and submit to the DEC and Con Ed a draft and final report for the location in accordance with Section D of this Scope of Work.

The Work Plan shall contain a schedule for performing all tasks specified in this Scope of Work and/or required under the Work Plan, and shall include the names of those Auditor employees who will perform those tasks. The schedule shall provide for the completion of the audits for all locations identified in Table A-1 and all other tasks set forth in the Work Plan, other than the unannounced, physical follow-up inspections, within 21 months after the DEC approves the Auditor's required audit protocols described below. The unannounced physical follow inspections shall be completed within 24 months after DEC approves the Auditor's required audit protocols.

In the event that the DEC disapproves the Work Plan, it will send the Auditor and Con Ed a written notice setting forth the changes that must be made to the Work Plan. The Auditor shall revise the Work Plan in the manner specified in DEC's notice and submit a revised Work Plan to DEC within 30 days after it receives DEC's notice.

2. Tasks

The Work Plan shall, at a minimum, require the Auditor to perform the following tasks:

(a) Work Plan Meeting

Prior to commencing the comprehensive environmental compliance audits, representatives of the Auditor, DEC, and Con Ed will meet to review the Work Plan and to discuss the Auditor's preparation of the audit protocols for the audits.

(b) Develop Audit Protocols

The Auditor shall develop audit protocols to guide each member of the audit team in assessing the environmental compliance status of Con Ed's locations. These protocols shall be specific to the scope of work, shall cover each area of the functional scope identified in Section A above, and shall include the minimum steps required to audit against all applicable environmental laws, regulations, and permits identified in Section A above. To help ensure consistency from audit to audit, the audit protocols shall provide explicit instructions of both what the Auditor should do to complete each step and how the Auditor should do it. References to the applicable statutory and regulatory requirements shall be included with each protocol step. An example of the type of protocol to be developed is included as Figure A-1.

Within 30 days after DEC's approval of the Work Plan, the Auditor shall submit its audit protocols to DEC and Con Ed for their review and DEC's approval. In the event that DEC disapproves the audit protocols, the Auditor shall revise them in the manner specified by DEC and submit the revised audit protocols to DEC within 30 days after it receives DEC's notice of disapproval.

(c) Pre-Audit Activities

Prior to commencing the audit at a location, the Auditor shall review appropriate background information for the location, including but not limited to, the following:

- Location map, site plans, and/or blueprints
- Description of operations
- Organization charts
- Listing of all environmental permits, licenses, and certificates
- Description of location's environmental programs, plans, and procedures (such as SPCC, USCG operations manual, and OPA plans; contingency plans; emissions inventory; wastewater treatment programs)
- Description of location's environmental control programs and equipment (such as secondary containment structures, spill prevention measures; maintenance operations; air and water pollution control and monitoring equipment)

(d) On-Site Audit Activities

The environmental compliance audits shall be conducted by a team of qualified, experienced Auditors who shall exercise objectivity and diligence in the performance of their work. The audits shall be conducted in a manner that is consistent with the current prevailing practices of environmental auditing. Each comprehensive environmental audit shall include the following on-site activities:

i) Opening Meeting

Upon arriving at the location, the Auditor shall hold a meeting with location personnel to present an overview of the audit process. At this meeting, the Auditor will be briefed by location personnel on the nature of the location's operations and its organization.

ii) Orientation Tour

Following the opening meeting, the location personnel shall lead the Auditor on a brief orientation tour that includes all points of interest (such as air emission and wastewater discharge points, storage sites, pollution control and monitoring equipment, compliance records repositories, etc.). The purpose of the tour is to provide the Auditor with a general orientation of the location with respect to layout, size, operations, and areas that are relevant to the scope of the audit.

iii) Review Audit Plan

Based on the initial information obtained from the opening meeting and the orientation tour, the Auditor shall review the audit plan to determine if any adjustments need to be made to emphasize any audit topics, or to delete audit topics that are not applicable to the location. Any adjustments made to the audit plan shall be identified in the Audit Report.

iv) Gather Audit Evidence

Audit evidence is the basis for assessing whether the location is in compliance with the applicable environmental requirements included in the scope of the audit. Audit evidence shall be gathered according to the protocols developed above and shall include the following methods.

- Interview Location Personnel. The Auditor shall interview key location personnel who are responsible for environmental compliance practices or operations with the ability to adversely impact public health or the environment. An appropriate number of other personnel involved in such operational and environmental activities shall also be interviewed to help ensure sufficient and consistent information is obtained.
- Review Relevant Documents. The Auditor shall review documents relevant to the scope of the audit, and as identified in the audit protocols. Such documents shall include, but not be limited to, SPCC, USCG, and OPA plans, permit applications and permits, operating records, toxic chemical inventories, air and water monitoring records and reports, waste management contingency plans, waste manifests, spill reports,

inspection and maintenance records, regulatory agency inspection reports.

- Observe Actual Operations. The Auditor shall observe actual operations to assess the location's compliance. Such operations shall include, but not be limited to, waste handling and storage practices, wastewater treatment and monitoring practices, air emissions control and monitoring practices, oil and chemical storage practices, tank management practices, oil and chemical handling and transfer practices. In addition, the Auditor shall inspect the location to verify that all pollution control and monitoring equipment, spill prevention and control equipment, secondary containment structures, and other equipment required under the applicable provisions of the statutory and regulatory requirements identified in Section A above are in place and operational.
- Verification Testing. The Auditor shall gather evidence to assess the location's compliance through verification testing activities such as retracing data, recomputation, and confirmation. A "sampling" approach can be used to examine large populations of records or documents or groups of employees to make a determination regarding compliance. The "samples" reviewed during the course of conducting the audit will form the basis of determining whether the location's practices, operations, and activities are in compliance with applicable environmental requirements. In order to determine the appropriate "sample" size, the following shall be used:

Size of Population	Sample Size
2-50	100%
51-100	35%
101-200	25%
201-250	20%
251-500	15%
501-1000	10%
Over 1000	5%

For example, the Auditor's determination of whether a location's discharge monitoring reports were appropriately completed over the past 12 months might require reviewing daily strip charts or other source documents to identify any excursions and then confirming that those excursions were included in the discharge monitoring reports. Reviewing strips charts for 365 days would require a significant amount of

audit team resources; thus (using the table above) 15% or 55 strip charts would be reviewed. The Auditor shall select an appropriate sampling method to obtain the sample size (such as random, block, interval).

v) Evaluate Audit Evidence

Once the Auditor has gathered sufficient evidence to assess the location's compliance status, it will evaluate the audit evidence and prepare for the exit meeting. Each Auditor is to review assigned protocol steps for completion, and develop a list of audit findings to be presented at the exit meeting.

vi) Conduct Exit Meeting

At the conclusion of the audit for each location, the Auditor shall schedule an exit meeting at which it will communicate all audit findings to DEC, the location staff, and other Con Ed representatives. Every effort should be made at the exit meeting to clarify any outstanding issues. The Auditor shall provide at least twenty-four (24) hours' advance notice of the audit meeting to DEC, ConEd, and the location staff.

D. Compliance Audit Reports

Within 30 days of the audit exit meeting for each location, the Auditor shall submit a draft compliance Audit Report for the location to DEC and Con Ed for their review and comment. The report shall include:

- i) A description of the scope and objectives of the audit;
- ii) A summary of the tasks undertaken and procedures followed to accomplish the compliance audit;
- iii) A listing of all instances of known or suspected non-compliance with the applicable federal, state, and local statutory and regulatory requirements identified above.
- iv) A certification by the Auditor that the compliance audit was performed in accordance with the requirements of this Scope of Work, the approved Work Plan, and prevailing practices of environmental auditing and that the Auditor set forth in the Audit Report all instances of known or suspected non-compliance with the statutory and regulatory environmental requirements identified above that the Auditor discovered during the compliance audit; and
- v) Recommendations for corrective action for each instance of non-compliance cited, with a ranking as to whether the recommended actions are considered to be of high, medium, or low priority and, if appropriate, recommended immediate or short-term and long-term measures or permanent solutions.

If requested by the Department or Con Ed, the Auditor shall meet with Department Staff and Con Ed within fifteen (15) days after the Auditor's submittal of the draft Audit Report to discuss the report. Within thirty (30) days after the Auditor's submittal of the draft Audit Report, the Department will provide written comments to Con Ed and the Auditor of any deficiencies to be addressed in the final report and Con Ed will submit to the Department and the Auditor written comments specifying any portions of the draft Audit Report that Con Ed believes are inaccurate. Within sixty (60) days after the Auditor's submittal of the draft Audit Report, the Auditor shall revise the draft Audit Report to address the deficiencies and inaccuracies specified in any written comments received from the Department and Con Ed and submit a final Audit Report for the Location to Con Ed for review and to the Department for its review and approval.

Con Ed shall not review any draft or final Audit Report prior to the report's submittal to the Department. The Auditor shall not submit a draft or final Audit Report to Con Ed prior to the time the Auditor submits the report to the Department.

E. Unannounced Inspections

The Auditor shall conduct unannounced follow-up inspections at ten percent of the Con Ed locations subject to audit under this Scope of Work (Table A-1). The selection of the locations and the timing of the inspections shall be mutually agreed to by the Auditor and DEC. These unannounced inspections are expected to be of a one-day duration and to focus on observing and evaluating actual operations for environmental compliance since submission of the final Audit Report. The Auditor is expected to observe and evaluate such activities as:

- Waste management practices;
- Wastewater management practices;
- Air emissions control and monitoring practices;
- CERCLA reporting practices;
- Tank management practices
- Sampling and analysis practices; and
- Any other applicable procedures or practices impacting environmental compliance.

Following each unannounced inspection, the Auditor shall prepare a brief summary report identifying all instances of non-compliance observed. This report shall be submitted to DEC and Con Ed within 15 days of each unannounced inspection.

F. Regular Meetings

Upon commencement of the audits, the Auditor and Con Ed will regularly meet with appropriate DEC staff. These meetings will generally take place at least one time per month to review the progress of the audits. During the meetings, the Auditor will orally report any noncompliance discovered since the previous meeting and may provide interim recommendations to Con Ed staff designed to correct any ongoing violations or remedy other shortcomings revealed during the audit process. The Auditor shall also discuss with DEC and Con Ed the anticipated

schedule for the audits and exit meetings that will be conducted by the Auditor during the next 30-day period.

Table A-1
Listing of Audit Locations

Audit Location	Site Name	Activities Included
Astoria, Queens	Astoria Site	Generating Station, Central Waste Treatment Facility, MOSF, Transformer Shop, Chemical Lab, LNG facility, 4 electric substations, utility tunnel head house, underground transmission system workout center, gas turbine facility, 2 PBS facilities, 2 CBS facilities
Arthur Kill, Staten Island	Arthur Kill Site	Generating station, Service Center, MOSF, gas turbine facility, electric substation, 2 PBS facilities, CBS
East River & 14th Street, Manhattan	East River Site	Generating station, steam plant, MOSF, service center, 2 PBS facilities, dielectric cable system cooling plant, 2 electric substations, CBS
Hudson Avenue, Brooklyn	Hudson Avenue Site	Generating station, MOSF, 4 electric substations, utility tunnel head house, gas turbine facility, 2 PBS facilities, dielectric cable system cooling plant, CBS, Fuel oil delivery by tankers
Narrows & First Avenue, Brooklyn	Narrows Site	MOSF, Gas Turbine facility, Administration Building, PBS, Fuel delivery by barge
Ravenswood & Vernon Boulevard, Queens	Ravenswood Site	Generating station, Steam Boiler House, 2 MOSFs, utility tunnel head house, gas turbine facility, 2 PBS facilities, 2 electric substations, CBS
Waterside - 40th Street & First Avenue, Manhattan	Waterside Site	Generating station, electric substation, PBS, CBS, 708 1st Ave Shop/Garage, dielectric cable system pressurization plant, 39th Street Parking Lot
74th Street Manhattan	74th Street Station	Generating Station, electric substation, PBS, CBS
West 59th Street, Manhattan	West 59th Street Station Site	Generating station, CBS, PBS, electric substation
Gowanus & 3rd Avenue, Brooklyn	Gowanus Site	Gas Turbine facility, MOSF barges, electric substation,

Audit Location	Site Name	Activities Included
East 60th Street, Manhattan	East 60th Street Station Site	Steam plant and PBS
North First Street, Brooklyn	North First Street Fuel Oil Facility	MOSF
Kips Bay & First Avenue, Manhattan	Kips Bay PBS	PBS
Van Nest, Bronx	Van Nest Site	Bronx Division Service Center, PBS, Repair Shops, CNG facility, two electric substations
Eastview, Westchester	Eastview Site	Eastview Service Center, PBS, electric substation
Hell Gate, 134 Street, Bronx	Hell Gate Site	Two electric substations, flush truck facility, utility tunnel head house
North & Central Brooklyn	Brooklyn Major Substations	Bensonhurst, Brownsville, and Greenwood Substations
179th Street, Bronx	Bronx Major Substations	East 179th Street Substation
Manhattan	Manhattan Major Substations	Sherman Creek, Trade Center, West 59th Street, East 29 Street, East 36 Street, West 42nd Street, West 65 Street, West 110th Street, Avenue A, Cherry Street, East 63rd Street, Leonard Street, West 19th Street Substations
Queens	Queens Major Substations	Glendale, Corona, Jamaica, Queensbridge Substations,
Staten Island	Staten Island Major Substations	Fox Hills, Goethals, Woodrow, Wainright, Willowbrook Substations,
Westchester County	Westchester Major Substations	Dunwoodie North, South, and Central; Granite Hill, Elmsford, Millwood, Sprain Brook, Harrison Street, Washington Street, White Plains, North Transition Station, Cedar Street, Pleasantville Substations
Brooklyn Service Centers	Service Centers Group 1	3rd Ave. (PBS, Flush truck facility); Atlantic Ave (PBS), Neptune (PBS)

Audit Location	Site Name	Activities Included
Bronx, Staten Island Service Centers	Service Centers Group 2	Bruckner (PBS), Davis Ave. (PBS)
Queens Service Centers	Service Centers Group 3	College Pt. (PBS), Farrington Street (Flush Truck Facility)
Manhattan Service Centers	Service Centers Group 4	W. 28th St. (Flush Truck facility, PBS), W. 110th St. (PBS)
Westchester Service Centers	Service Center Group 5	Rye (PBS), Yonkers (PBS)

LEGEND FOR TABLE A-1

- MOSF - Major Oil Storage Facility (capacity over 400,000 gallons)
- LNG - Liquefied Natural Gas Plant
- PBS - Petroleum Bulk Storage Facility (capacity over 1,100 gallons)
- CBS - Chemical Bulk Storage Facility
- CNG - Compressed Natural Gas Facility

NOTE: Most substations contain pressurization plants that serve Con Ed's dielectric cable system

FIGURE A-1:

Example of Audit Protocol

**Solid and Hazardous Waste Management
Audit Protocol**

Training

54. Based upon information gathered to this point and further interviews with pertinent facility staff, develop a list of all site personnel who work with hazardous waste and would therefore require training.
55. For large quantity generators:
- a. Verify that the facility has developed and implemented a hazardous waste training program, that it is written, and that it contains a description of the scope of the training, who will be trained, and job descriptions for those people (29 CFR 1910.120; 40 CFR 262.34(a)(4)) and 265.16). *(Note: The scope should include regulatory requirements, facility practices, and emergency response procedures.)* In addition:
 - 1) List the job title and credentials of all persons involved in personnel training.
 - 2) Obtain a copy of the employee roster for those employees involved in the management of hazardous wastes and determine the date of employment in that capacity.
 - b. Select a random sample of those employees involved in hazardous waste management and facility operations involving hazardous wastes. If possible, select one person from each job title with greater than six months' tenure (29 CFR 1910.120, 40 CFR 265.16) and perform the following:
 - 1) Review the hazardous waste training files for the random sample selected above. Determine if each person selected has a defined job title and job description which includes requisite skill, education, and duties of the job title.
 - 2) Determine if each file includes a written description of the type and amount of both introductory and continuing training that will be given to one filling the position.
 - 3) Develop a checklist to be used for determining if documentation exists which verifies that an employee has received all the training required to fill the position. (List both introductory [within six months of employment] and continuing education [annually] required and indicate if given.

Auditor(s)/ Comments	Working Paper Reference

ATTACHMENT 2 TO APPENDIX A:

SCOPE OF WORK FOR ENVIRONMENTAL MANAGEMENT SYSTEMS EVALUATION PROGRAM

A. OBJECTIVES

The objectives of the Environmental Management Systems Evaluation Program are to:

- i) Evaluate the environmental management program that exists within Con Ed, both at the corporate and location levels shown on Table B1.
- ii) Evaluate the systems established to identify and respond to changes in environmental statutory and regulatory programs.
- iii) Evaluate Con Ed's existing environmental management practices and, to the extent practicable, compare its practices to existing practices of other utility companies operating within the continental United States and to generally accepted corporate environmental management practices.
- iv) Based on the above evaluations, provide recommendations to enhance existing environmental management systems as may be necessary.

The functional scope of the environmental management systems evaluations shall include policies, procedures, guidelines, and practices related to compliance with applicable federal, state, and local environmental laws and regulations and the requirements of any permits, licenses, or administrative orders that were issued to Con Ed pursuant to those laws and regulations.

The scope of each Environmental Management System ("Evaluation") shall include the following topic areas:

- Top management commitment and support - the degree to which top management demonstrates its commitment by communicating expectations and monitoring environmental performance and initiatives.
- Environmental reporting level - the extent to which the environmental function has access to senior management and adequate organizational stature to effectively implement needed programs.
- Quantity/quality of resources - the quality and quantity of human, financial and technical resources allocated that control/impact environmental performance.
- Line responsibility - the degree to which operating personnel behave as if environmental compliance and performance is their personal responsibility.
- Awareness and training - the degree to which the organization fosters and achieves an understanding and a strong sense of the importance

of meeting environmental requirements and implementing sound environmental practices.

- Continuous improvement - the use of Total Quality Management or a similar process to search for improved ways to minimize environmental impacts while enhancing environmental conditions on an ongoing basis.
- Policies, procedures, and programs - the existence of a formal environmental policy statement, and the extent to which it has been communicated to the organization and supported with implementation guidance.
- Management organization - definition of reporting relationships, responsibilities, and authorities, and their fit within the larger corporate structure and operations.
- Day-to-day management systems - systems and procedures which enable the organization to effectively manage environmental issues in day-to-day operations, including compliance with relevant statutory and regulatory environmental requirements.
- Communications - the extent to which relevant environmental information is shared with and easily accessible to appropriate internal and external stakeholders.
- Planning - the degree to which planning related to environmental management exists and has been integrated into the organization's overall strategic and business planning.
- Risk assessment/risk management - the degree to which formal systems exist for identifying environmental hazards and associated risks, and then managing or otherwise mitigating those risks.
- Emergency response - the degree to which the organization develops procedures, trains its workers, and obtains physical capabilities to effectively respond to potential emergency situations.
- Regulatory tracking and influence - the degree to which an effort is made to monitor and influence proposed or emerging environmental statutory and regulatory requirements, and then incorporate those requirements into company operations.
- Management information systems - the extent to which automated management approaches for recordkeeping, data management, communications, operations management, and reporting are used.
- Project/program reviews - the extent to which all major acquisitions, capital projects, process modifications, and other significant changes to the corporation and facility operations are reviewed in the context of their environmental impact.
- Issue-specific programs - the degree to which the company has developed and implemented specific programs that address unique or potentially significant environmental risks (e.g., greenhouse gases, acid rain, ozone depleting substances).

- Measurement - the degree to which the company has established mechanisms to measure environmental performance.
- Assurance - the existence of formal activities to verify compliance with applicable statutory and regulatory environmental requirements, report the findings of those activities to management, and implement corrective actions for deficiencies identified.

The Consultant shall conduct an Environmental Management System Evaluation for each Con Ed organization and each Con Ed location identified in Table B-1 in accordance with the provisions of this scope of work.

B. INITIAL MEETING

The New York State Department of Environmental Conservation (DEC or Department) will schedule a meeting among representatives of the Consultant, the Department, and Con Ed to review the Consultant's technical proposal and to discuss its preparation of the Work Plan required in Section C below.

C. ENVIRONMENTAL MANAGEMENT SYSTEMS EVALUATION PROGRAM WORK PLAN

Within 30 days of the initial meeting described in Section B above, the Consultant shall submit a Work Plan to Con Ed for its review and to DEC for its review and approval.

1. Criteria

The Work Plan shall set forth the procedures the Consultant will follow so that upon completion of the Evaluations, the Consultant will be able to:

- (a) Evaluate all systems, plans, and procedures at the corporate and location levels, as appropriate, with respect to the specific topics areas identified above, and with respect to effective implementation of environmental management systems, plans, and procedures.
- (b) Recommend changes to or introduction of systems for effectively and efficiently managing activities with respect to environmental compliance.
- (c) Prepare and submit to DEC and Con Ed a draft and final report in accordance with Section C.3 of this scope of work.

The Work Plan shall contain a schedule for performing all tasks specified in this scope of work and/or required under the Work Plan, and shall include the names of the Consultant employees who will perform those tasks. The schedule shall provide for the completion of those tasks within 18 months after DEC approves the Consultant's environmental management systems evaluation protocols as specified below. In the event that DEC disapproves the Work Plan, DEC will send the Consultant and Con Ed a

written notice setting forth the changes that must be made to the Work Plan. The Consultant shall revise the Work Plan in the manner specified in DEC's notice and submit a revised Work Plan to DEC within 30 days after it receives DEC's notice.

2. Tasks

The Work Plan, at a minimum, shall require the Consultant to perform the following tasks:

(a) Work Plan Meeting

Prior to commencing the Evaluations, the Consultant, DEC and Con Ed shall meet to review the Work Plan and discuss the Consultant's preparation of the protocols for the Evaluations.

(b) Develop Environmental Management Systems Evaluation Protocols

The Consultant shall develop protocols to guide each evaluator in assessing the environmental management systems at each location. These protocols shall be specific to the scope of work and shall include the minimum steps required to evaluate each topic area identified above. To help ensure consistency from Evaluation to Evaluation, the protocols shall provide explicit instructions of both what the evaluator should do to complete each step and how the evaluator should do it. Once developed, the environmental management systems evaluation protocols shall be submitted to DEC for its review and approval. An example of the type of protocol to be developed is included as Figure B-1. Within 30 days after DEC's approval of the Work Plan, the Consultant shall submit its protocols to Con Ed for its review and to DEC for its review and approval. In the event that DEC disapproves the protocols, the Consultant shall revise the protocols in the manner specified in DEC's notice of disapproval and submit the revised protocols to DEC within 30 days after its receives DEC's notice.

(c) Pre-Evaluation Activities

Prior to conducting each Evaluation, the Consultant shall review records, plans and other documentation to:

- Identify the activities that are subject to environmental statutory or regulatory requirements and that impact environmental compliance;
- Provide an understanding of how and where the statutory and regulatory environmental requirements apply to the location under review.

(d) On-Site Activities

Each environmental management systems evaluation shall include the following on-site activities:

(i) Identify Existing Management Systems

Each Evaluation shall begin with identifying whether there are adequate systems in place or proposed at the location to establish compliance and if so, shall review

existing systems to determine whether they are achieving compliance and the proposed systems to assess whether they are capable of achieving compliance. Where no systems currently exist, the Consultant shall identify all factors necessary to achieve compliance with all applicable environmental requirements. In addition, the location's organization structure will be reviewed to determine appropriate mechanisms for establishing systems to manage compliance;

(ii) Observe and Evaluate Actual Operations

The Consultant shall observe, as necessary, and evaluate actual operations to understand the activities regulated by statutory and regulatory environmental requirements, and to determine whether the existing management systems are being implemented as required and designed;

(iii) Interview Facility Personnel

The Consultant shall discuss the location's environmental management systems with appropriate personnel at each location;

(iv) Review Records and Documents

The Consultant shall, as necessary to accomplish the objectives set forth in Section A, examine relevant records and documents to determine:

- Whether proper records are kept and maintained
- What personnel have knowledge of the records and their location
- The organization of the records
- The systems available and in use to maintain the records
- What corporate and location guidelines, policies, and procedures are in place related to environmental compliance

(v) Conduct Exit Meeting

At the conclusion of each Evaluation, the Consultant shall schedule an exit meeting at which it will communicate all findings and observations to the location staff, DEC, and representatives of Con Ed. Every effort will be made at the exit meeting to clarify any outstanding issues. The Consultant shall provide at least 24 hours' advance notice of the meeting to DEC, Con Ed, and the location staff.

3. Management Systems Report

Within 60 days after the Consultant has completed the Evaluations at all the locations listed in Table B-1, the Consultant shall submit a draft report to DEC and Con Ed that provides a complete description of the environmental management programs in place at the locations reviewed, reports the findings of the Evaluations, and recommends initiatives for remedying problems identified. The report shall include:

- A description of the scope and objectives of the Evaluations;
- A summary of the tasks undertaken and the procedures followed to accomplish the Evaluations;
- A general description of the systems, operations, policies, and practices related to the scope of work;
- An evaluation of the environmental management systems and recommendations for future action to improve such systems; and
- A listing of operational changes Con Ed has implemented or plans to implement in the future to better achieve compliance with applicable regulatory requirements.

Within 90 days of the Consultant's submittal of the draft management systems evaluation report, DEC and Con Ed will submit any comments that they may have on the draft report. Within 120 days of submittal of the draft evaluation report, the Consultant shall submit to Con Ed for its review and to DEC for its review and approval final management systems evaluation report that addresses any comments received from DEC or Con Ed. If requested by DEC and/or Con Ed, a meeting will be held with the Consultant DEC and Con Ed within 30 days after the Consultant's submission of the draft report to discuss the draft report.

4. Regular Meetings

Upon commencement of the Evaluations, the Consultant and Con Ed shall regularly meeting with appropriate DEC staff. These meetings will generally take place at least one time per month to review the progress of the Evaluations. During the meetings, the Consultant will orally report key findings discovered since the previous meeting and may provide interim recommendations to Con Ed staff designed to improve Con Ed's environmental management systems. The Consultant shall also provide DEC and Con Ed with its anticipated schedule for the Evaluations and exit meetings that it expects to conduct during the next 30-day period.

TABLE B-1:

Listing of Audit Locations

Astoria, Queens	Astoria Site	Generating station, Central waste treatment facility, MOSF, Transformer Shop, Chemical Lab, LNG facility, utility tunnel head house, gas turbine facility, 2 PBS facilities, 2 CBS facilities, 4 substations
Hudson Avenue, Brooklyn	Hudson Avenue Site	Generating station, MOSF, 4 electric substations, utility tunnel head house, gas turbine facility, 2 PBS facilities, dielectric cable system cooling plant, CBS
East River & 14th Street, Manhattan	East River Site	Generating station, steam plant, MOSF, service center, PBS facilities, dielectric cable system cooling plant, 2 electric substations, CBS
Waterside, 40th Street & First Avenue, Manhattan	Waterside Site	Generating station, electric substation, PBS, CBS, 708 1st Ave. Shop/Garage, dielectric cable system pressurization plant
West 59th Street, Manhattan	West 59 Street Site	Generating station, MOSF barges, PBS, CBS, dielectric cable system heat exchanger facility
Van Nest, Bronx	Van Nest Site	Two Electric Substations, Bronx Division Service Center, PBS, Repair Shops, CNG facility
Hell Gate, 134th Street, Bronx	Hell Gate Site	Two Electric Substations, Flush truck facility, Utility tunnel head house
Westchester County	Westchester Major Substations	East View, Sprain Brook, Cedar Street, Elmsford Substations

Queens County	Queens Major Substations	Glendale, Corona, Jamaica, Queensbridge Substations,
Queens Service Centers	Queens Service Centers	College Pt (PBS), Farrington Street (Flush truck facility)
Manhattan Service Centers	Manhattan Service Centers	W 28th St (Flush truck facility, PBS), W 110 St. (PBS)
4 Irving Place	Con Ed Corporate Offices	Con Ed Senior Management, law, environmental affairs, and relevant operating departments ¹

LEGEND FOR TABLE B-1

- MOFS - Major Oil Storage Facility (capacity over 400,000 gallons)
- LNG - Liquefied Natural Gas Plant
- PBS - Petroleum Bulk Storage Facility (capacity over 1,10 gallons)
- CBS - Chemical Bulk Storage Facility
- CNG - Compressed Natural Gas Facility

NOTE: Most substations contain pressurization plants that serve Con Ed's dielectric cable system.

¹ Including, but not limited to, the construction and operations departments that are responsible for the inspection, maintenance and repair of the inter-facility fuel oil pipelines and the dielectric cable network.

FIGURE B-1:

Example of a Management Systems Evaluation Protocol

2.2 Training

Training programs are a critical element of an environmental program, particularly given the rapid change in regulations and technology, and turnover in personnel. Comprehensive training programs assure that the specific training needs of all employees are assessed and met in a timely fashion, before an agency action or incident occurs. Given the potential liabilities, training programs should also address the needs of contractors and visitors.

- 2.2.1 Has the organization systematically identified training needs for all positions whose activities can impact environmental performance (including staff functions and line management)
 - a. Who is responsible for determining the training needs for each job category?
 - b. If decentralized (i.e., done by individual managers), is there guidance or support services to assure consistency?
 - c. Do training requirements vary with the expertise of individuals within specific job categories?
 - d. Do accurate/current job task inventories exist and are critical task analyses performed to support the determination of training needs?
 - e. Does the needs assessment go beyond that defined in regulatory requirements?
 - f. Are individual training/development plans developed for each employee? Are they consistent with the needs assessment?

- 2.2.2 Have effective training programs been implemented consistent with the needs of individual line and staff personnel
 - a. Review training records and compare completed training to identified needs/requirements. Is the required training being completed?
 - b. Review in-house training materials to assess their appropriateness. Do they provide an appropriate level of detail? Are they tailored to specific functional areas and facilities, where possible?
 - c. Are course evaluations filled out by attendees? Review the results of course evaluations.
 - d. Are "tests" conducted to verify course effectiveness?
 - e. Do the root causes of deficiencies in audits, inspections, and incidents point to a inadequate training?

- 2.2.3 Is there a functioning training recordkeeping system?
 - a. Is the system computer-based (if appropriate)?
 - b. Does it address all employees in all departments?
 - c. Does it cover internal and external courses?

Auditor(s)/ Comments	Working Paper Reference

