

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

ENVIRONMENTAL AUDIT AGREEMENT No. XXX

This Environmental Audit Agreement (“Agreement”) is entered into by and between **[REGULATED ENTITY]** (the “Regulated Entity”), located at **[REGULATED ENTITY’S ADDRESS]** and the New York State Department of Environmental Conservation (the “Department”).

WHEREAS, the Department is responsible, by and through the Commissioner, to carry out the policy of the state as set forth in the Environmental Conservation Law and regulations promulgated pursuant to the ECL;

WHEREAS, environmental auditing plays a role in protecting human health and the environment by identifying, correcting, and ultimately preventing violations of environmental law and regulations;

WHEREAS, the Department adopted Commissioner Policy # XX, Environmental Audit Incentive Policy (Policy) to encourage regulated entities to perform environmental audits; disclose violations; and adopt effective approaches to prevent future violations, including pollution prevention measures, thereby increasing compliance with environmental laws and regulations statewide and protecting public health and the environment;

WHEREAS, the Department has determined that the above referenced Regulated Entity meets the eligibility criteria in the Policy;

WHEREAS, this Agreement details the manner in which the Regulated Entity will audit the Facility, disclose the violations, and prevent future violations; and includes the benefits that inure to the Regulated Entity as a result of this activity;

WHEREAS, this Agreement is governed by the terms of the Policy, except to the extent that those terms are explicitly modified herein.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES SET FORTH HEREIN, THE PARTIES HERETO AGREE TO THE FOLLOWING:

1. OBLIGATIONS OF THE REGULATED ENTITY

A. SCOPE OF THE AUDIT

- i. The Regulated Entity will perform an environmental audit (the “Audit”) of the facility known as [NAME OF FACILITY] (the “Facility”), facility I.D. # [FACILITY I.D.], located at [FACILITY ADDRESS], for compliance with [all applicable] requirements of the New York State Environmental Conservation Law, New York Navigation Law, and the rules and regulations promulgated there under, as identified herein.
 - (1) 6 NYCRR Part _____ [Title of Regulation];
 - (2) 6 NYCRR Part _____ [Title of Regulation].

- ii. Within 10 days of the effective date of this Agreement, the Regulated Entity will identify qualified personnel or consultants to perform the Audit and a schedule for completing the Audit, and submit the information to the Department in writing.

B. DISCLOSURE

- i. Within 60 days of the effective date of this Agreement, the Regulated Entity will complete the Audit required by this Agreement and disclose to the Department in a written disclosure report or reports any condition(s) discovered during the Audit that require corrective action.
- ii. Each disclosure report will include a certification by the Regulated Entity's responsible official that the disclosure report is true, accurate, and complete; and, with reference to each disclosed condition requiring corrective action, contain:
 - (1) A citation to the relevant law or regulatory provision ;
 - (2) The action(s) selected by the Regulated Entity to correct the condition;
 - (3) The status of the corrective action with expected date of completion; and
 - (4) The means taken by the Regulated Entity to prevent recurrence of the violation.
- iii. Each disclosure report is subject to review and approval by the Department. If the Department disapproves a disclosure report, including any of the corrective action identified therein, the Regulated Entity will revise the disclosure report in accordance with the Department's specific comments and submit the revised disclosure report to the Department within 15 days after receipt of the Department's disapproval. If the Department disapproves the revised disclosure report, the Regulated Entity may invoke dispute resolution pursuant to Section 5 of this Agreement.

C. EFFECT OF AUDIT

- i. Once a disclosed violation is corrected, and a disclosure report is submitted to the Department indicating completion of the corrective action, no further action concerning that condition, or the status of corrective action, is required.
- ii. The Regulated Entity waives its right to seek judicial or administrative review of any issue of law or fact related to the terms of this Agreement, except as related to corrective action. If a dispute arises concerning any of the corrective action set forth in the revised disclosure report which cannot be resolved by the parties to the Agreement, the Department or the Regulated Entity may invoke the dispute resolution procedures described in Paragraph 5.K. to resolve the dispute.

D. CORRECTION PERIOD

- i. Within 120 days of the effective date of this Agreement, the Regulated Entity will correct each disclosed condition requiring corrective action. If the Regulated Entity is unable to correct an identified condition within the 120-day period, it shall request an extension of time from the Department in writing and provide a schedule, accompanied by a justification of the requested extension. Any extension of the 120-day period shall be subject to Department approval which shall not be unreasonably withheld. Except in extraordinary circumstances, the correction period may not exceed one year.
- ii. Pursuant to the Section V.E of the Policy, the Regulated Entity will undertake corrective action consistent with any applicable protocol prescribed by law and regulation, or as may be directed by the Department in writing. Correcting identified

conditions includes remediating any environmental harm associated with the condition, and where appropriate shall include implementing procedures to prevent future violations.

2. OBLIGATIONS OF THE DEPARTMENT

A. PENALTY WAIVER

- i. The Department will waive the gravity-based penalties for reported condition which are determined to be eligible under section V.B. of the Policy that are voluntarily discovered through the Audit, timely- disclosed and corrected, in accordance with the Policy and this Agreement. Disclosed conditions that are ineligible for a penalty waiver under Section V.B. of the Policy may be considered for penalty mitigation at the discretion of the Department in accordance with the provisions of DEE-1 Civil Penalty Policy.
- ii. The Department reserves the right to seek penalties based upon potential economic benefits to the Regulated Entity to the extent that the Department can demonstrate that such benefits exceed \$5,000.00.
- iii. Economic benefit penalties that exceed \$5,000.00 will be reduced by an amount not to exceed the amount that the entity commits to invest in pollution prevention not otherwise required by law at the Facility. The pollution prevention investment will be subject to review and approval by the Department.

B. COORDINATION WITH U.S. ENVIRONMENTAL PROTECTION AGENCY

The Department will inform staff at U.S. Environmental Protection Agency, Region 2 (“EPA”) of this Agreement and will provide a copy to EPA. Nothing herein restricts EPA from acting as it deems appropriate.

3. ADDITIONAL BENEFITS AND INCENTIVES

Regulated Entities that perform an environmental audit of all significant aspects of the Facility’s operation and disclose and correct all conditions identified in the environmental audit are entitled to additional benefits and incentives identified in the Policy and by the Department. Regulated Entities that go on to implement environmental management systems covering all significant aspects of the Facility’s operation and those that implement pollution prevention are entitled to further benefits. **[These benefits may be listed where applicable.]**

4. COMMUNICATION

- A. All written communications required by this Agreement may be transmitted by the United States Postal Service, by private courier service, by hand delivery, or by electronic mail.
- B. The Department designates as its contact for all communication related to this Agreement:
[Department Attorney- name, post office address, phone number, e-mail address]
- C. The Regulated Entity designates as its “responsible official” for communication and submission of disclosure reports related to this Agreement:
[Responsible Official’s name, post office address, phone number, email address]

- D. The Department and the Regulated Entity reserve the right, upon written notice to the other party, to designate additional or alternative individuals to receive communications related to this Agreement.

5. MISCELLANEOUS

- A. Acknowledgement. The Regulated Entity acknowledges that it has read, understands, and agrees to abide by all the terms of the Policy and this Agreement.
- B. Compliance with Law and Regulation. Neither this Agreement, nor compliance with this Agreement relieves the Regulated Entity of its obligation to comply with the regulations covered by this Agreement, and all other applicable federal, state and local laws and regulations.
- C. Duration. This Agreement shall take effect when it is signed by the Commissioner of Environmental Conservation or his designee, and shall expire when the Regulated Entity has fully complied with the requirements of this Agreement. Either party may terminate this Agreement without cause with 30 days advance written notice to the other party.
- D. Access. For the purpose of monitoring or determining compliance with this Agreement, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by the Regulated Entity, in order to inspect and/or perform such tests as the Department may deem appropriate; to copy such records; or to perform any other lawful duty or responsibility.
- E. Force Majeure. If the Regulated Entity cannot comply with a deadline or requirement of this Agreement because of an Act of God, war, strike, riot, catastrophe, or other condition that was not caused by the negligence or willful misconduct of the Regulated Entity and that could not have been avoided by the Regulated Entity through the exercise of due care, the Regulated Entity shall apply in writing to the Department within 20 days after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.
- F. Indemnity. The Regulated Entity 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 resulting from the acts and/or omissions of the Regulated Entity, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Agreement by the Regulated Entity or its employees, servants, agents, successors, or assigns.
- G. Priority/Modifications. In the event of any actual or perceived conflict between this Audit Agreement and Commissioner Policy # XX, Environmental Audit Incentive Policy (Policy), this Audit Agreement shall control. No change in this Agreement shall be made or become effective except as agreed to by the parties to this Agreement and specifically set forth in writing. The Regulated Entity's requests for modification shall not be unreasonably denied.

- H. FOIL. Subject to the provisions of the Freedom of Information Law, the Department will respond to any requests made pursuant to that law regarding this Agreement and documents submitted pursuant to this Agreement.

- I. Other Rights. The Department reserves the right to proceed against the Regulated Entity for any alleged violations outside the scope of the Agreement as defined in Section 1.A above or alleged violations within the scope of the Agreement that are not timely reported or timely corrected. Nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting (1) any legal, administrative or equitable rights, claims, actions, suits, or demands that the Department may have against anyone other than the Regulated Entity; (2) any right of the Department to enforce the terms, provisions and conditions of this Agreement; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to the Regulated Entity; or (4) the summary abatement powers of the Department either at common law or as granted pursuant to statute or regulation.

- J. Dispute Resolution. If disputes concerning any of the corrective action set forth in the revised disclosure report cannot be resolved by the parties to the Agreement, the Department or the Regulated Entity may request dispute resolution services from the Assistant Commissioner of the Office of Hearings and Mediation Services (“OHMS”) at the Department of Environmental Conservation. The requesting party must submit the request to the Assistant Commissioner in writing and copy the other party to the Agreement. The Administrative Law Judge assigned to the matter, with input from the parties, will determine the protocol and schedule for the dispute resolution. The parties agree to exhaust this administrative remedy prior to seeking adjudicatory relief. If dispute resolution services fail to resolve the dispute, the parties reserve their judicial, equitable and administrative rights and defenses relating to resolution of the dispute.

- K. Entire Agreement. This Agreement shall constitute the entire agreement of the Department and the Regulated Entity with respect to violations discovered and disclosed to the Department pursuant to the Audit specifically referenced herein. In the event of a conflict between the terms of this Agreement (including any and all attachments thereto and amendments thereof) and the terms of the Policy, the terms of this Agreement shall control.

- L. Binding Effect. The provisions, terms, and conditions of this Agreement shall bind the Regulated Entity and the Regulated Entity's legal representatives, receivers, trustees in bankruptcy, successors and assigns.

DATED: _____

JOSEPH MARTENS
 COMMISSIONER
 NEW YORK STATE DEPARTMENT OF
 ENVIRONMENTAL CONSERVATION

By: _____
 [Name], Regional Director
 Region #

