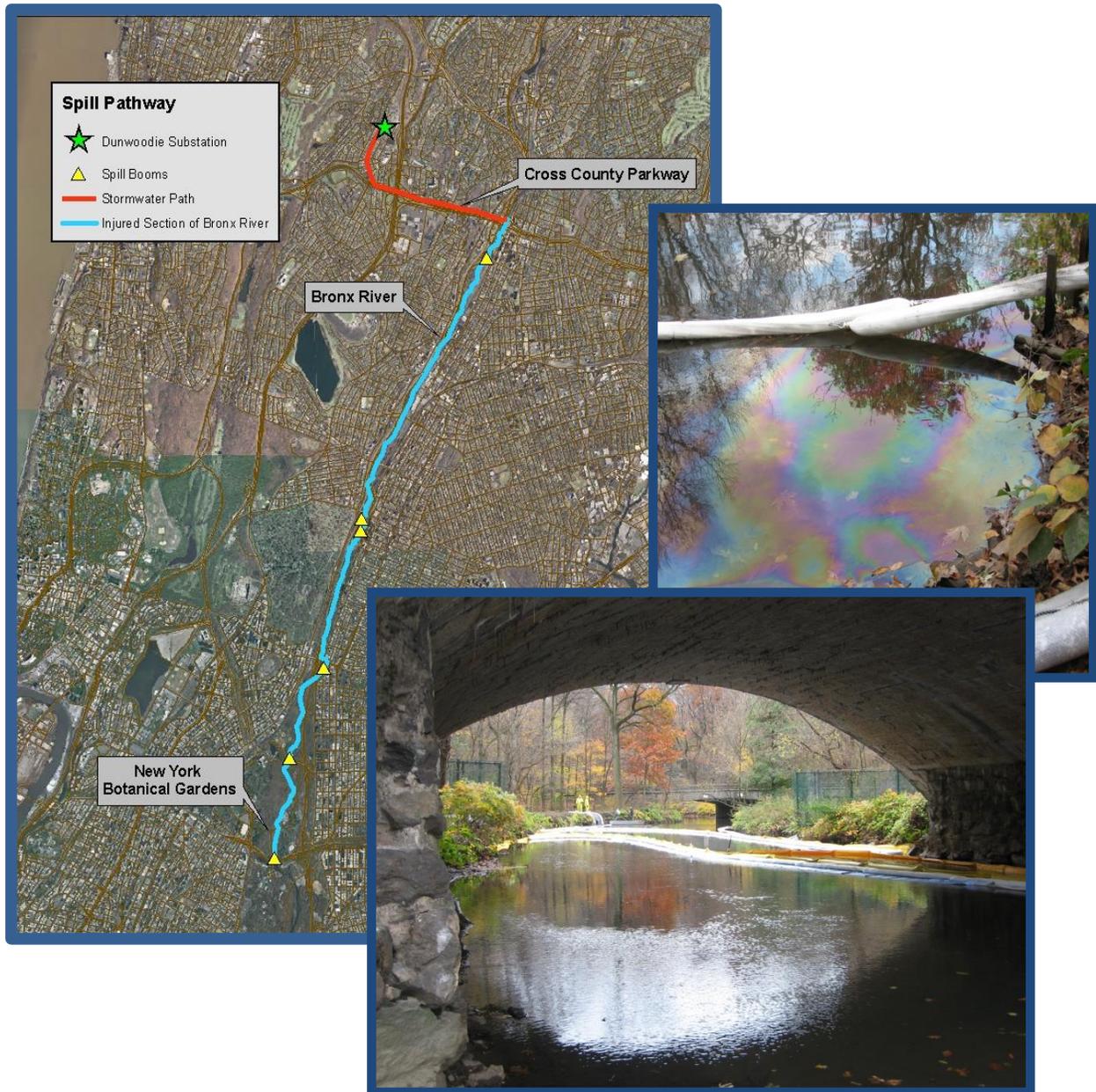


CONSOLIDATED EDISON COMPANY OF NEW YORK
DUNWOODIE SUBSTATION
NATURAL RESOURCES DAMAGES
RESTORATION PLAN
BRONX RIVER, WESTCHESTER COUNTY, NY



INTRODUCTION

On November 4, 2009, a transformer fire occurred at the Consolidated Edison Company of New York (Con Edison) Dunwoodie Substation located at 125 Smart Avenue in Yonkers, Westchester County, NY. The fire resulted in a spill of dielectric fluid (a petroleum product) into the Substation's storm water drainage system, which connects to the City of Yonkers storm water system and then into the Bronx River (Figure 1). A detailed summary of this event is documented in New York State Department of Environmental Conservation (NYSDEC) Spill Report No. 0908747 and in a December 18, 2009 letter from Con Edison of New York, Inc. to the NYSDEC.

As a result of the spill, approximately 15,000 gallons of dielectric fluid were released into the environment and an undetermined volume of that fluid discharged into the Bronx River. The dielectric fluid entered the Bronx River via the City of Yonkers stormwater discharge system just downstream of the Cross County Parkway and continued downstream along an approximately 6 mile reach of the River (Figure 1).

The Commissioner of the NYSDEC is the designated Natural Resource Trustee for New York State (hereinafter, "Trustee"), and is authorized to pursue claims and administer recoveries for Natural Resource Damages (NRD). By law, any money recovered through this claim must be spent on restoration, replacement, or acquisition of the equivalent of the injured natural resource, or of the services that were lost as a result of the spill. The dielectric fluid qualifies as "petroleum" under the Navigation Law (NL) § 172 and gives rise to liability under NL § 181 against Con Edison for the spill. NL § 181(a) states that any person who discharges petroleum shall be strictly liable, without regard to fault, "for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained." These direct and indirect damages include the cost of restoration or replacement of natural resources, the cost of replacing real or personal property, the loss of income or impairment of earning capacity, and other damages resulting from a discharge.

An NRD settlement (No. R3-20100329NRD) was included in the July 2010 Order on Consent (Case No. R3-20100329-18, Attachment A). A total of \$71,526 was awarded to compensate for direct and indirect injuries to natural resources. The funds will be used to restore and improve natural resources in and around the Bronx River.

RESOURCE AND INJURY DESCRIPTION

The Bronx River winds through southern Westchester County and Bronx, NY for 23 miles and provides a resource for fishing, strolling, biking, boating, and nature study in an area of heavy development and industry. The riparian forest on both sides of the River is an important wildlife corridor. Since the 1970s, conservation and restoration efforts in the Bronx River and adjacent forests have resulted in improved water quality and riparian forest and increased opportunity for public exposure to and enjoyment of nature.

The spill of dielectric fluid into the Bronx River in November 2009 impacted approximately 6 miles of the Bronx River (Figure 1, Appendix A) and resulted in direct injuries

to vegetation and benthic biota. Con Edison responded quickly to the spill by placing booms at several low velocity sites along the River (Figure 2). Con Edison replaced booms as they became saturated and made every effort to stop the travel of the dielectric fluid downstream. However, some oil went around the booms, and in forested locations, leaves and other organic material were covered with oil, necessitating their removal. While efforts were made to minimize the impacts of the clean-up, riparian vegetation along the banks of the River was trampled and physically impacted by personnel responding to the spill.

The spill resulted in injuries to the citizens of New York State (NYS), including lost use of the River and resources expended during spill response. The Bronx River Alliance (BxRA) canceled a canoe trip and water quality testing, and the Green Apple Corps postponed an invasive plant removal and planting work along the River. Additionally, the New York City (NYC) Department of Parks Natural Resources Group (NRG), BxRA, and the NYSDEC used valuable fiscal resources when responding to, assessing, and monitoring the spill.

RESTORATION ANALYSIS

The BxRA is an independent organization, which was formed to provide a coordinated voice for the River. As such, BxRA works with its partners (including NYC Department of Parks) to manage the Bronx River corridor, implement restoration projects, provide public education about the River, and collect and share River water quality data (Bronx River Alliance 2014). BxRA employs a full-time Conservation Crew to conduct fieldwork in the River corridor, including water monitoring and restoration activities. Because of the Conservation Crew and their coordination with various stakeholders, BxRA is uniquely positioned to implement NRD restoration activities. Consequently, BxRA was asked to propose restoration projects for the Bronx River that would result in a net benefit to all Bronx River user groups. The proposed projects are described below.

Project 1: Bronx River Forest Restoration \$40,000

The Bronx River Forest is one of the oldest forests in NYC and a remnant of the magnificent hardwood forest that once blanketed the region. Located in a wide, flat section of the Bronx River Valley in one of the densest, low-income neighborhoods in the county, the Forest is also one of the last functioning floodplains along the River and in all of NYC.

In 2005, the NYC Department of Parks and Recreation completed a major capital project to re-construct sections of the Bronx River Forest floodplain and River channel by removing sediment deposits on the banks, increasing its ability to store and filter floodwater. This restoration project improved floodplain functions and enhanced native habitat for animals, such as heron, muskrat, beaver, and turtles. Much of the fluid from the Con Edison spill that was not captured upstream was eventually detected and collected in this previously restored area.

Although major improvements have been made this past decade, additional restoration is needed to sustain the important functions of the Bronx River floodplain. This project targets a 2.4 acre vegetated area of the Forest, where invasive plant species are displacing native, riparian

species (Figure 3). Invasive plant species typically have little food or habitat value for wildlife and crowd out native vegetation that does provide food and habitat. Sustaining a resilient and healthy forest will improve the ecosystem and will better protect the River from ongoing stresses by creating erosion control, wildlife habitat, and a noticeable aesthetic improvement to the Forest. It will also replace vegetation and restore habitat that was damaged during the spill and subsequent clean-up activities. To achieve these goals, the area will be cleared of invasive plants and planted with native plant species. Specific activities by the BxRA Conservation Crew and volunteers will include cutting and grubbing the invasive vegetation two to three times per year. The Bronx River Riparian Invasives Management Plan, developed by the NYC Department of Parks NRG, will be used as a guide to implement ecological restoration, using best practices and standardized protocols for Bronx River Forest restoration.

Project 2: Trash Boom \$20,000

As a means of preventing debris and petroleum fluids from floating downstream, BxRA proposes to install a trash boom (a permanent in-stream structure designed to catch floating trash and woody debris) across a section of the River near the Westchester County border (Figure 3). In response to the 2009 dielectric fluid release, petroleum sorbent booms (temporary booms designed to absorb surficial petroleum contaminants) were deployed at various points on the River (Figure 2). The booms removed some of the oil, but accessing areas to deploy the booms and properly secure them to the banks was problematic. A permanent trash boom upstream of the more sensitive River areas would serve two purposes. First in the event of a spill, the trash boom would create a physical barrier to petroleum fluids headed down stream. If a future spill occurs, the anchor points installed for the trash boom would make deploying sorbent booms faster and more effective, minimizing the quantity of petroleum fluids that could travel further downstream. Second, the trash boom would trap the steady budget of floatables and trash emptying into the River from the Westchester County storm sewers. These items flow downstream and are frequently caught on woody debris in the channel. A collection of branches near the riverbank which could be an ecological enhancement often becomes a “trash dam,” which then is removed to address the unsightly conditions it creates. Installing the boom would also achieve the following goals:

- Quantify the amount of floatables and other non-organic debris entering the River through storm sewers and other upstream sources.
- Reduce the amount of floatables that are carried down the River from points to the North, helping to maintain the attractiveness of the River and reduce contamination.
- Allow more woody debris to remain in the lower River by reducing entrapped garbage. This will in turn enhance the vegetation and habitat near the riverbank.

Maintenance of the boom will require a significant amount of staff time and will be accomplished by coordinating efforts with volunteer and job training groups. The boom will be

inspected during weekly River reconnaissance and after rain events. Consolidation of debris will allow separation of recyclable materials and non-recyclable materials. When appropriate, woody debris may be placed below the boom. Data collected on the quantity and composition of debris will be used to determine the effectiveness of the project.

The New York Botanical Garden (NYBG), a BxRA partner located downstream of the proposed boom location, has indicated that they also devote staff time to removing non-woody debris and larger woody debris for the reasons mentioned above. NYBG would continue to track labor time spent on debris removal to determine if the upstream boom results in reduction of debris on their property.

Project 3: Keeping eyes on the River ~\$12,000

This project provides support for the weekly reconnaissance of the Bronx River corridor, which extends northward from the mouth of the River to the NYC boundary line. The BxRA Conservation Crew conducts these activities, which include:

- weekly assessment of conditions, addressing immediate problems, and identifying problems requiring follow-up actions, such as spills, blockages, and erosion.
- rapid assessment of invasive plant management areas on a bi-annual basis to assess progress.
- debris scan at set locations where dumping, encampments or excessive littering are problems.
- photo documentation of selected sites to monitor progress over time of bank stabilization and erosion controls, invasive plant management, growth of planting plots, and recovery in areas of human disturbance.
- identifying and addressing safety concerns that impede public access, such as path conditions and hanging branches.
- weekly water quality monitoring.
- checking green infrastructure installations in the Bronx River corridor to ensure proper function and to remove blockages.
- documenting and investigating observed indicators of pollutants or dumping.

SELECTED PROJECTS

The Con Edison spill resulted in injury to the fish, aquatic organisms, and riparian vegetation of the Bronx River. It also created injuries to NYS and its citizens through loss of use of the River and clean-up costs of various agencies. The goal of the NRD funds is to compensate for these injuries through restoration and/or improvement of the resource. All projects proposed by BxRA meet these criteria and would be implemented within the path of the spill (Figure 3). Because BxRA is able to provide additional input and resources to each alternative, the NRD funds will be sufficient to fully fund Projects 1 and 2.

Project 1 will restore habitat in the Bronx River corridor in an area directly injured by the spill, thereby implementing compensatory restoration for natural resources injured. Through the BxRA Conservation Crew, River management volunteers, and partners, BxRA is uniquely situated to undertake this project, having complete access to the areas selected for restoration and the personnel trained to carry out the restoration plan.

Project 2 will promote rehabilitation of the resource, will improve recreational access by reducing trash pollution in the River, and will create a barrier to minimize or prevent injury from future spills. This alternative will benefit other River stakeholders such as NYBG by reducing the amount of time spent collecting debris from the River. BxRA has the personnel required to maintain and monitor the boom, making this a cost-effective option.

Funds remaining after Projects 1 and 2 are implemented would be sufficient to fund a portion of Project 3, allowing BxRA to monitor the success of the restoration actions. Monitoring River water quality provides important information regarding the impact of the spill and River recovery. It also helps to monitor for future contaminants and changes in the health of the River.

IMPLEMENTATION

NYSDEC has determined that the preferred restoration approach for this NRD case is to release funds to BxRA to implement Projects 1 and 2 and to direct any remaining funds to Project 3. BxRA would be responsible for providing annual updates on the progress of project implementation, monitoring reports regarding the success of the restoration actions, and a Final Completion Report within 3 years of award issuance. BxRA has been accepted into the the NYS Grants Gateway, which will facilitate awarding the NRD funds. Additionally, BxRA has a current license agreement with NYC Department of Parks and Recreation to access the property along the River and will be able to modify existing permissions to conduct these additional activities. Prior to beginning any work in the River or on its banks, BxRA will acquire any required stream or floodplain permit.

PUBLIC OUTREACH ON PREFERRED PROJECT AND PUBLIC COMMENT

A draft Restoration Plan was prepared for public review and comment in compliance with requirements of NRDA rules and regulations and was published in the NYSDEC Environmental Notice Bulletin on September 10, 2014 with a 30 day comment period. A summary of and response to comments received is provided in Appendix B.

LITERATURE CITED

Bronx River Alliance. 2014, February 13. About Us. *BronxRiver.org*. Retrieved February 13, 2014 from <http://bronxRiver.org/?pg=content&p=aboutus>

Figure 1. Dielectric fluid flowed through the Dunwoodie Substation storm water system through the City of Yonkers storm water system along the Cross County Parkway and into the Bronx River. An approximately 6 mile reach of the Bronx River was contaminated.

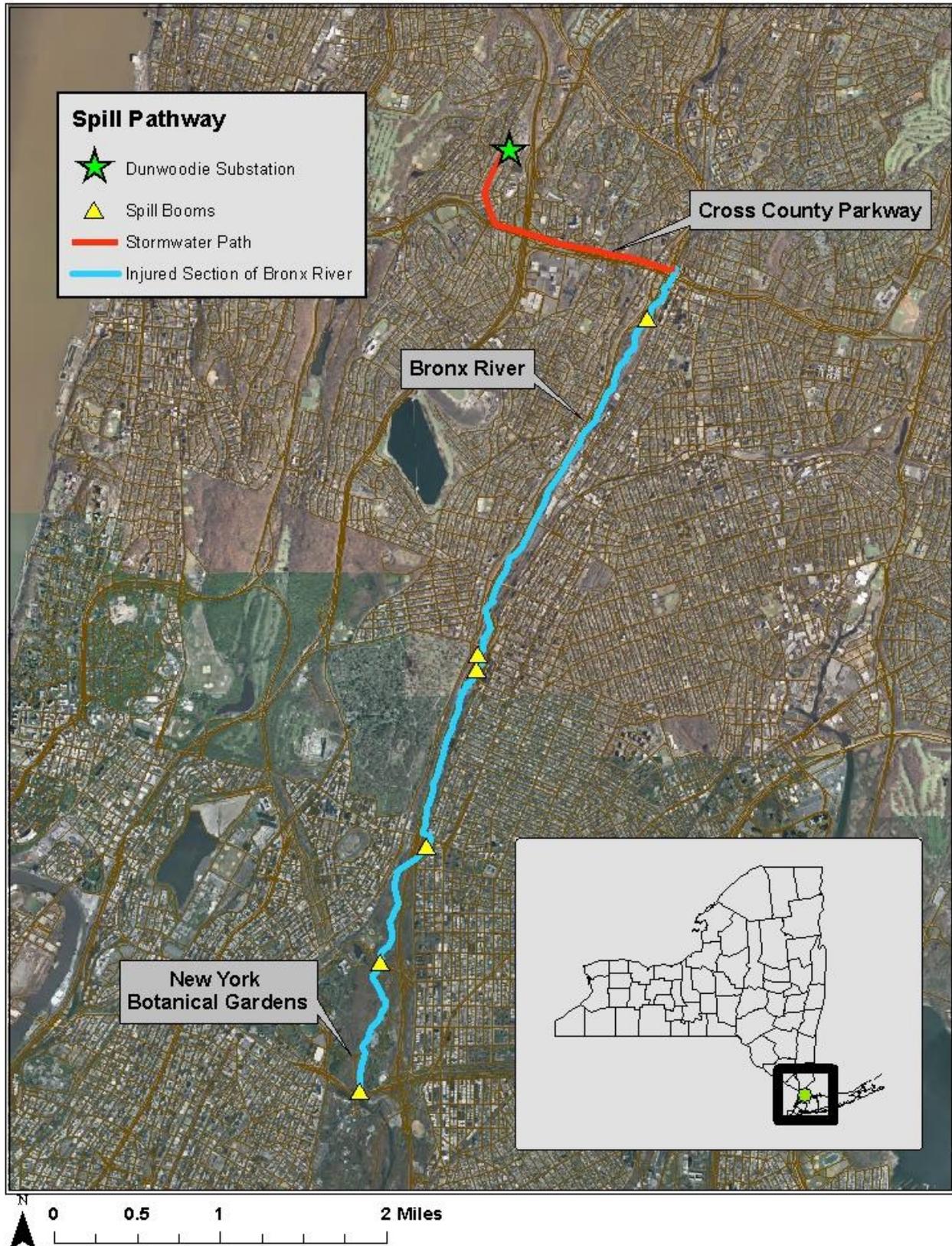
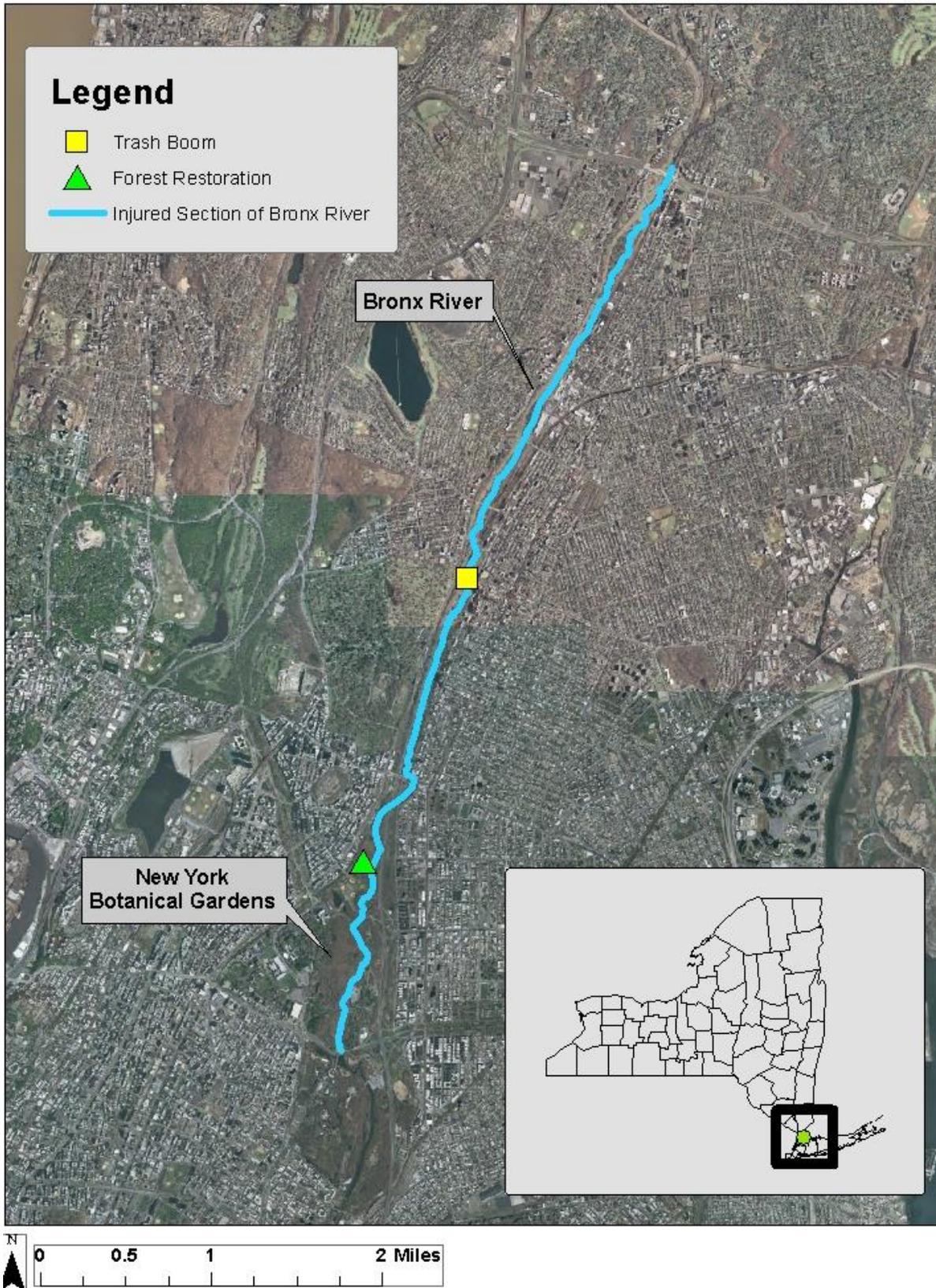


Figure 2. Images of petroleum sheen, sorbent booms, and spill clean-up activities on waters of the Bronx River.



Figure 3. Locations of Projects 1 and 2 proposed by the Bronx River Alliance relative to the impacted reach of the Bronx River.



Appendix A.
Executed Order on Consent:
Consolidated Edison Company of New York
Case No. R3-20100329-18

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of Violations of Article 17 of the
Environmental Conservation Law ("ECL") and
Part 750 of Title 6 of the Official
Compilation of Codes, Rules and Regulations of the
State of New York ("6 NYCRR"), and New York State's
claim for damages for the injury of New York's natural
resources under Articles 3 and 71 of the ECL
by

ORDER ON CONSENT
Case Nos. R3-20100329-18
and R3-20100329-18NRD

Consolidated Edison Company of New York, Inc.;

Respondent.

(Westchester County)
-----X

WHEREAS:

1. The Department of Environmental Conservation ("DEC" or "the Department") is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State pursuant to Environmental Conservation Law ("ECL") Section 3-0302.

2. DEC has jurisdiction over water pollution control pursuant to Article 17 of the ECL; and over petroleum spills under Navigation Law Article 12.

3. The Commissioner of Environmental Conservation ("the Commissioner") is the designated trustee for New York State's ("the State") natural resources pursuant to: Section 1006 (b)(3) of the Oil Pollution Control Act of 1990 ("OPA") 33 U.S.C. Section 2706 (b)(3); Section Subpart G of the National Contingency Plan, 40 CFR Section 300.605; Section 107(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(f)(2); 33 U.S.C. Section 2706 (b)(3); and Section 311 of the Federal Water Pollution Control Act, a/k/a the Clean Water Act ("CWA"), 33 U.S.C. Section 1321(f)(5).

4. The Department also carries out the State's role as trustee for natural resources pursuant to, ECL Section 1-0101, 3-0301, and 15-0601 and Article 12 of the New York Navigation Law (e.g. NL Section 170).

5. This Order on Consent ("Order") and Administrative Settlement ("Settlement") is issued pursuant to the Commissioner's authority under the New York ECL, Section 3-0301 and Section 71-2727 to protect and restore the environment and natural resources of New York.

6. Respondent, Consolidated Edison Company of New York, Inc. ("Con Edison") is a domestic corporation maintaining offices at 4 Irving Place, New York, N.Y., 10003.

7. Respondent Con Edison is the owner of Dunwoodie Central Substation located at 125 Smart Avenue in Yonkers, New York (the "Facility").

8. Respondent is the permittee on State Pollutant Discharge Elimination System ("SPDES") permit number NY 025 0929 which authorizes the discharge of treated stormwater into the Bronx River.

**Dunwoodie Substation Fire and Explosion
Released Dielectric Fluid to the Environment**

9. On November 4th, 2009, a fire and explosion occurred at the Facility and dielectric fluid (oil) from transformer N1 was released from Respondent's Facility into the environment.

10. The release was to the air and water of the State of New York specifically including into a catch basin, the City of Yonkers storm drain system, and into the Bronx River, impacting approximately a six-mile stretch of the Bronx River.

11. Approximately 15,000 gallons of dielectric fluid were released to the environment, some of which was discharged directly into the Bronx River.

12. Respondent's SPDES permit number NY 025 0929 does not authorize discharge of dielectric fluid into the catch basin or to the storm drain system.

13. Respondent's SPDES Permit number NY 025 0929 does not authorize discharge of dielectric fluid into the Bronx River.

14. The dielectric fluid was released to the Bronx River when it flowed to a detention pond and through an oil water separator ("OWS") and then into a discharge manhole into a catch basin at the Facility, and finally into a City of Yonkers storm drain.

15. Among other components involved in the operation and maintenance of the stormwater system, and implemented pursuant to the SPDES permit requirements, is an OWS system.

16. The inability of the valve between the detention pond and OWS to function either automatically or manually has been attributed to damage to the valve and its controls caused by Respondent and its agents that occurred during the Rockview construction project on the Dunwoodie Site, on or around 2005 to 2008.

17. On or around July 6, 2009, Respondent's agents (consultants) identified specific problems with components of the OWS system at the Facility, including damaged wiring which prevented automatic operation of the underground valve, and damage to the actuator which prevented manual operation of the valve. On or about July 21, 2009 to August 12, 2009, Respondent indentified and specified the replacement equipment and scope of work necessary for the repair and proper operation of the OWS system, including excavation of a manhole and replacement of an underground valve and wiring.

18. On or about November 4, 2009, the morning of the fire and explosion, Respondent installed a plywood plug to stop the flow of water and dielectric fluid into the OWS.

19. The OWS System was replaced and operational on or about November 18, 2009, after the fire and explosion at the Dunwoodie Substation.

**Natural Resources Damages Caused by
Respondent's Release to the Environment**

20. New York's natural resources include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state. (e.g. ECL Section 15-0505(3); CERCLA Section 101 (16), 42U.S.C. Section 9601(16)).

21. The release of dielectric fluid from Respondent's Facility into the Bronx River injured the environment and based on the Department's natural resources damage assessment, caused the death of aquatic organisms including benthic organisms and other sediment dwellers, and the riparian vegetation along the banks of the Bronx River.

22. The death of the fish and other aquatic organisms, and the destruction of riparian vegetation caused by Respondent's actions constitutes an injury to the natural resources of New York State under CERCLA's regulations at 43 C.F.R. Part 11, implementing Natural Resource Damage ("NRD") claims.

23. The release of dielectric fluid from Respondent's Facility caused indirect damage to the State of New York, and specifically to citizens who use the natural resources of the Bronx River due to loss of use of the river, including the Bronx River Alliance which had to cancel a canoe trip, and scheduled water quality testing which was suspended as a result of the discharge; and the Green Apple Corps which had to postpone an invasive plant removal and planting work along the Bronx River as a result of the discharge.

24. The New York City Parks Department Natural Resource Group, the Bronx River Alliance, and the Department used valuable fiscal resources when responding to, assessing and monitoring the discharge.

25. Respondent did not have a permit from the Department to discharge dielectric fluid into the Bronx River. Respondent's permit only authorized the release of treated stormwater into the Bronx River in accordance with the SPDES permit conditions.

26. Respondent violated:

A. ECL Section 17-0701(1)(a), which makes it unlawful for any person, until a SPDES permit has been granted, to make or cause to make or use any outlet or point source for the discharge of sewage, industrial waste or other wastes or the effluent therefrom, into the waters of this state because Respondent did not have a permit from the Department to discharge dielectric fluid into the Bronx River.

B. ECL Section 17-0803 which makes it unlawful to discharge pollutants to the waters of the state from any outlet or point source without a SPDES permit or in a manner other than as prescribed by such permit, because Respondent did not have a permit from the Department to discharge dielectric fluid into the Bronx River; and 6 NYCRR Section 750-1.4(a) which provides no person shall discharge or cause a discharge of any pollutant without a SPDES permit having been issued to such person pursuant to this Part and ECL Article 17, Title 7 or 8, with respect to such discharge; and no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit.

C. Navigation Law Section 181(1) which states that any person who discharges petroleum shall be strictly liable, without regard to fault, for all cleanup costs and all direct and indirect damages, no matter by whom sustained. Dielectric fluid is petroleum under Navigation Law Section 172 (15).

D. 6 NYCRR Section 750-2.8(a)(2) for failing to properly operate and maintain all disposal facilities installed or used by the permittee to achieve compliance with the conditions of the SPDES permit because Respondent identified necessary components of the Oil Water Separator system as inoperable, specifically an inoperable and inaccessible automatic and manual shut off valve on the oil water separator. Upon discovery of the inoperable and improperly maintained components of the OWS, Respondent failed to correct or replace such components until after the fire, explosion and release to the environment of the dielectric fluid. The inoperable OWS system components remained improperly maintained between July 6, 2009 and November 18, 2009, for one hundred thirty six days.

27. ECL §71-1929 provides that a person who fails to perform any duty imposed by Titles 1 through 11 inclusive and Title 19 of Article 17, the rules and regulations promulgated thereunder, or orders or determinations of the commissioner promulgated thereto, shall be liable for a penalty of not to exceed thirty-seven thousand, five hundred dollars (\$37,500.00) per day for each violation, and may be enjoined from any continuing violation.

28. Respondent desiring to resolve potential claims for natural resources damages against it, admits these violations and affirmatively waives the right to a public hearing in this matter in the manner provided by 6 NYCRR Part 622, consents to issuing and entering of this Order, agrees not to contest the authority or jurisdiction of the Commissioner and of the Department to enter into or enforce this Order and Settlement, agrees to be bound by the terms, provisions and conditions of this Order, including the Compliance Schedule attached hereto, and affirmatively waives the right to a public hearing in any matter that may arise under the terms of this Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. Civil Penalty.

Respondent shall be liable to pay a civil penalty in the amount of SEVEN HUNDRED NINETY-THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$793,750.00), as follows:

a. Payable Penalty:

FOUR HUNDRED NINE THOUSAND THREE HUNDRED EIGHTY FOUR DOLLARS (\$409,384.00) shall be payable to the Department within thirty (30) days of the Effective Date of this Order. DEC case number R3-20100329-18 shall be endorsed on the face of the check. The civil penalty shall be paid by check, bearing the signature of Respondent or an authorized representative of the Respondent, made payable to the "Department of Environmental Conservation" and forwarded to the Regional Attorney, New York State Department of Environmental Conservation, Region 3, 21 South Putt Corners Road, New Paltz, NY 12561.

b. Environmental Benefit Project:

TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) which shall fund an Environmental Benefit Project (EBP) that complies with the Department's Environmental Benefit Projects Policy (CP-37). If the project is completed for less than TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), the Respondent shall, at the sole discretion and direction of the Department, either pay the remaining balance as penalty, or implement one or more additional, Department-approved EBPs having a cost equal to but no greater than the remaining balance. Such monies shall be payable at the direction of the Department within ninety (90) days of the Effective Date of this Order, unless the Department determines that additional time is warranted and grants an extension in writing.

Within 90 days of the Effective Date of this Order, unless the Department determines that additional time is warranted and grants an extension in writing, Respondent shall submit to the Department a description of, and plan for, an EBP that includes a schedule for implementation ("EBP Implementation Plan"), which is subject to the Department's review and approval. Respondent shall make such changes to the EBP Implementation Plan as the Department may require. If the EBP Implementation Plan has not been approved by the Department within 90 days of the Effective Date of this Order or if a Department's proposed EBP has not been approved within 90 days of the effective date of this Order, then the amount set forth in this paragraph (\$200,000.00) shall be paid as a penalty for the violations identified in this Order by check, bearing the signature of Respondent or an authorized representative of the Respondent, made payable to the "Department of Environmental Conservation" and forwarded to the Regional Attorney, New York State Department of Environmental Conservation, Region 3, 21 South Putt Corners Road, New Paltz, NY 12561. DEC case number R3-20100329-18 shall be endorsed on the face of the check. Upon the Department's approval, the EBP Implementation Plan or the Department's approved EBP shall be an enforceable part of this Order.

c. Suspended Penalty:

ONE HUNDRED EIGHTY-FOUR THOUSAND THREE HUNDRED SIXTY SIX DOLLARS (\$184, 366.00) shall be suspended provided Respondent strictly adheres to the terms and conditions of this Order, including the Compliance Schedule attached thereto.

II. Natural Resources Damages and Costs Payments.

The Respondent shall pay for Natural Resources Damages and Assessment and Oversight Costs in the amount of NINETY THOUSAND SIX HUNDRED SIXTEEN DOLLARS (\$90,616.00) as follows:

a. Assessment and Oversight Costs

NINETEEN THOUSAND AND NINETY DOLLARS (\$19,090.00) for NRD assessment and restoration oversight costs incurred by the Department and its employees, representatives, agents and others by check, money order, or by electronic funds transfer, payable to "NYSDEC-Natural Resource Damages Fund."

b. Natural Resources Damages

SEVENTY ONE THOUSAND FIVE HUNDRED AND TWENTY SIX DOLLARS (\$71,526.00) for Natural Resources Damages caused by the release of a dielectric fluid into the Bronx River, by check, money order, or by electronic funds transfer, payable to "NYSDEC-Natural Resource Damages Fund".

Both payments shall be made no later than thirty (30) days after the effective date of this Order, and should be sent to Office of General Counsel, 625 Broadway, 14th Floor, Albany, N.Y. 12233-1500, ATTN: Sharon L. Brooks. DEC case number R3-20100329-18NRD shall be endorsed on the face of the checks. The provisions of this Order are not intended to and shall not be interpreted to restrict the ultimate authority and discretion of the Commissioner to determine the use of the funds received for natural resource damages and assessment and oversight costs in accordance with applicable law.

III. Schedule of Compliance.

Respondent shall strictly comply with the terms of this Order and with the attached Schedule of Compliance, including any report(s), plan(s), proposal(s) and other submissions

made pursuant thereto. The Schedule of Compliance and all such submissions are hereby deemed incorporated into this Order, upon approval by the Department if such approval is required, and shall be fully enforceable as part of this Order.

IV. Notice of Noncompliance.

In the event that the Department determines, in the Department's sole discretion, that the Respondent has failed to timely and fully comply with any provision of this Order, the Department may serve upon the Respondent a notice of noncompliance setting forth the nature of the violation(s). Service of such notice may be by personal service or by certified mail return receipt requested (restricted delivery not required) at the Respondents' address as specified in Paragraph 6 of this Order, or, if such service is refused or cannot be completed, by ordinary mail.

V. Release.

Conditioned upon the satisfactory performance by Respondent of all its obligations under this Order, and in consideration of the payments that will be made by Respondent to the Department pursuant to paragraph I and II above, and subject only to this Order,

- A. the Commissioner, as the designated Trustee for New York State's natural resources, releases Respondent and its successors and assigns (including successors in title) from all claims or causes of action under any federal or State law for natural resource damages, for natural resource damage assessment costs and restoration oversight costs, resulting from the releases of dielectric fluid into the Bronx River, expressly described in paragraph II above;
- B. Department shall release Con Edison from any further civil liability under Article 17 of the ECL and Article 12 of the Navigation Law, and the applicable regulations,

resulting from releases of dielectric fluid into the environment on November 4, 2009, as expressly described above.

VI. Reservation of Rights, Reopeners, and Violation of Order.

A. Notwithstanding any other provision of this Order, the Commissioner reserves the right to initiate proceedings against Respondent and its successors (including successors in title) seeking recovery of natural resource damages based on (1) conditions that, as of the effective date of this Order, were unknown to the Commissioner, and were undiscoverable with the exercise of due diligence and that contribute to and materially increase an injury to, destruction of, or loss of natural resources ("Unknown Conditions"); or (2) information received by the Commissioner after the date of execution of this Order which indicates that there is material injury to, destruction of, or loss of natural resources of a type and extent unknown to the Commissioner and which were undiscoverable with the exercise of due diligence as of the date of execution of this Order ("New Information"). An increase solely in the assessment of the magnitude of an injury, destruction or loss to natural resources or in the estimated or actual natural resource damages, all arising from or relating to the release, threatened release or disposal of the Contaminants at or from the Site, shall not be considered to be "Unknown Conditions" or "New Information" within the meaning of this paragraph.

B. Nothing in this Order shall be construed as barring, affecting or diminishing any rights or authorities of the Department, the Commissioner, or the Commissioner's designee, to pursue Respondent and its successors (including successors in title) and assigns for any action, other than for those actions described herein, or to pursue any other party or to take any action whatsoever.

C. Failure of Respondent to comply with the terms of this Order shall be deemed to be a violation of this Order and of the FCI. and, in the event of any such violation, the

Department shall be entitled to enforce the terms of this Order, and seek penalties and injunctive relief as provided by applicable law and regulation. Compliance with this Order shall not excuse nor be a defense to charges of any violations of the ECL or any regulation or permit issued thereunder, which may occur subsequent to the date of this Order.

VII. Submissions.

All reports and submissions required in this Consent Order shall be submitted to the Department, via U.S. Mail, or overnight delivery (e.g., Federal Express) as follows:

A. a hardcopy original and an electronic copy in .pdf format on compact disc to:

1. Edward Moore, P.E.
Regional Spills Engineer,
New York State Department of Environmental Conservation, Region Three
21 South Putt Corners Road
New Paltz, New York 12561
Re: Case No. R3- R3-20100329-18 and R3-20100329-18NRD; and

2. Thomas Rudolph, P.E.
Regional Water Engineer
New York State Department of Environmental Conservation, Region Three
100 Hillside Avenue, Suite 1W, White Plains, New York 10603-2860;
Re: Case No. R3- R3-20100329-18 and R3-20100329-18NRD;

B. An electronic copy in .pdf format on compact disc to the:

Regional Attorney
Office of General Counsel, Region 3
New York State Department of Environmental Conservation, Region Three
21 South Putt Corners Road
New Paltz, New York 12561
Re: Case No. R3-20100329-18 and R3-20100329-18NRD

C. An electronic copy in .pdf format on compact disc to:

Andrew O. Guglielmi, Esq.
Office of General Counsel,
625 Broadway, 14th Floor,
Albany, N.Y. 12233-1500
Re: Case No. R3-20100329-18 and R3-20100329-18NRD

Respondent shall be responsible for the content of any submissions made pursuant to this Order and shall certify in writing to the Department that such submission complies with the requirements set forth in this Order. Submission of any material containing assertions of fact shall be considered an affirmative representation by Respondent of the truth of such assertions. Respondent shall be in violation of this Order if any submission is of such poor quality that it does not constitute a good faith effort to comply with the provisions of this Order.

VIII. Review of Submitted Remedial Plans and Proposals.

After review of any remedial plan or proposal required by this Order and its Schedule of Compliance, the Department shall notify Respondent, in writing, of its approval or disapproval of the submission. If the Department approves the submission, Respondent shall implement it in accordance with its schedule and terms, as approved. If the Department disapproves the submission, the Department shall provide to Respondent written notice of its disapproval, specifying with reasonable particularity the grounds for disapproval. Within 30 (thirty) days after Respondent receives written notice of disapproval, Respondent shall submit a revised submission which fully responds to each of the Department's specified grounds for disapproval. After the Department's receipt of Respondent's revised submission, the Department shall notify Respondent, in writing, of its approval or disapproval. If the Department approves the revised submission, Respondent shall implement it in accordance with its schedule and terms, as approved. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by DEC to make it approvable. If the Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submission, the Respondent shall be in violation of this Order. Upon

Department approval, a submission or revised submission shall be deemed incorporated into this Order.

IX. Inspections.

For the purpose of insuring compliance with this Order, and with applicable provisions of the ECL and regulations promulgated thereunder, representatives of this Department shall be permitted access to relevant records during reasonable hours to inspect and/or perform such tests which the Department deems appropriate to determine the status of Respondent's compliance.

X. Other Approvals.

Respondent shall be obligated to obtain whatever permits, easements, rights of entry, approvals or authorizations may be necessary in order to carry out its obligations under this Order. This Order shall not relieve the Respondent of the obligation to comply with any other laws, rules or regulations of the State of New York or any other governmental authority which are applicable to Respondent's activities, nor preclude or limit such enforcement action as may be authorized by law for any such violation.

XI. Other Remedies.

(a) Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) the Department's right to enforce, administratively or at law or in equity, the terms, provisions and conditions of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall be in breach of the provisions hereof; (3) the Department's right to require that Respondent take such additional measures as may be necessary for the protection of public

health or the environment, including interim remedial measures; or (4) the Respondent's right to challenge any such action by the Department, whether by administrative hearing or otherwise, to the extent otherwise permitted by law.

(b) This Order shall not be construed to prohibit the Commissioner or the Commissioner's duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XII. Indemnification.

Respondent or any successors, assigns or transferees, shall indemnify and hold harmless 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 Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XIII. Force Majeure.

Respondent shall not be in default of compliance with this Order to the extent that Respondent may be unable to comply with any provision of this Order because of the action of a national or local government body or court, an act of God, war, strike, riot or catastrophe as to any of which the negligence or willful misconduct on the part of Respondent was not a proximate cause; provided, however, that Respondent shall use its best efforts to comply. Respondent shall provide written notice to the Department immediately upon obtaining knowledge of such event. In addition, Respondent shall, within twenty-one days of such event, provide written request to the Department for an appropriate extension or modification to this Order, along with documentation evidencing entitlement to relief herein. Relief under this clause shall not be available to Respondent, with regard to a particular event, if Respondent

fails to provide timely notice of such event. The Respondent shall have the burden of proving entitlement to relief under this clause, by clear and convincing evidence.

XIV. Modification.

This Order and Settlement may not be modified except in a writing executed by the DEC Commissioner or the DEC Commissioner's authorized representative.

XV. Default.

The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL, and may constitute sufficient grounds for revocation pursuant to 6 NYCRR 621.14 of any permit, license, certification or approval issued to the Respondent by the Department.

XVI. Entire Agreement.

The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the violations set forth above. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing pursuant to Paragraph XIV hereof. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

XVII. Binding Effect.

This Order shall be deemed to bind the Respondent, its officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for Respondent, including, without limitation, any subsequent operator of the Facility who may carry on activities now conducted by Respondent at the Facility, and any successor in title to the Facility or any interest therein. Respondent shall provide a copy of this Order (including any submissions incorporated herein) to any contractor or subcontractor hired to

perform work required under this Order, and shall require compliance with this Order as a term of any contract for performance of work under this Order. Respondent shall nonetheless be responsible for ensuring that all work performed under this Order is in compliance with the terms of the Order.

XVIII. Headings.

The section headings set forth in this Order and Settlement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order and Settlement.

XIX. Effective Date.

This Order shall not become effective until it is signed by the Regional Director on behalf of the Commissioner.

Dated: New Paltz, New York

7/19, 2010

ALEXANDER B. GRANNIS
Commissioner
Department of Environmental Conservation

By: 

WILLIAM C. JANEWAY
Regional Director, Region 3
Department of Environmental Conservation

This Order on Consent has been reviewed and approved by the Regional Attorney as to form.

By: 

JOHN L. PARKER
Regional Attorney

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of this Order without further notice, waives its right to a hearing in this matter, and agrees to be bound by the terms, conditions and provisions of this Order. The undersigned represents and affirms that they have the legal authority to bind Respondent(s) to the terms and conditions of this Order.

Consolidated Edison Company of New York, Inc.

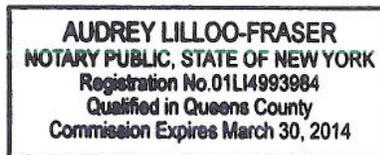
By: *[Signature]*

Title: *General Counsel*

ACKNOWLEDGMENT

On this 15th day of July, in the year 2010, before me, the undersigned, personally appeared Elizabeth Moore, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as shown in the instrument, and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Audrey Lilloo-Fraser
Notary Public



SCHEDULE OF COMPLIANCE

Respondent: Consolidated Edison Company of New York, Inc.
Site or Facility: Dunwoodie Central Substation located at 125 Smart Avenue in Yonkers,
New York
DEC Case No.: R3-20100329-18 and R3-20100329-18NRD

RESPONDENT IS REQUIRED TO SELF-CERTIFY TIMELY COMPLETION OF EACH OF THE ACTIVITIES REQUIRED BY THIS SCHEDULE.

1. Self-certification: Respondent(s) shall submit to DEC, within fifteen (15) days of each milestone date set forth in this Order, a signed statement certifying that the payment or task required was completed by that date, and that the it was done in the manner required by this Order.

Submission of the required certification shall be considered an affirmative representation by the Respondent of the truth of its contents. Any false statement made therein shall be punishable pursuant to Section 210.45 of the Penal Law, and as may be otherwise authorized by law.

SUBSTATION REQUIREMENTS

Failure to submit a required certification by the due date shall be a violation of this Order, and shall establish a legal presumption that Respondent(s) has failed to comply with that requirement of the Schedule.

1. Within 30 days of the Effective Date of this Order, Respondent shall submit a written document to NYS DEC that identifies all transmission and area and unit substations located in NYS DEC Region 3. The document shall identify point source discharges to surface or groundwater and stormwater discharges with potential contaminants that may need SPDES permits. Respondent shall indicate those transmission and area and unit substations which have SPDES permits, and those without SPDES permits.

2. Within 60 days of notification of a determination by the Department that SPDES permits are needed, Respondent shall submit to NYS DEC, SPDES permit applications for the transmission and area substation facilities.

3. Within 60 days of the Effective Date of this Order, Respondent shall submit to NYS DEC an audit plan to evaluate the effectiveness of all currently operating oil/water separators and other treatment units at all its transmission and area substation facilities; in which Respondent shall evaluate the ability of the oil/water separators and other treatment units to contain oil and/or other pollutants on site in case of catastrophic failures, such as transformer fires and explosions; and in which Respondent shall evaluate whether any of its transmission and area

substation facilities that do not have oil/water separators or appropriate treatment units, need them to prevent discharges of oil and/or pollutants from those facilities.

4. Within 90 days of the Effective Date of this Order, Respondent shall complete the audit described in paragraph number 3 of this Schedule of Compliance, and Respondent shall provide to the Department for approval a schedule to install and make operational all treatment units identified in paragraph 3 of this Schedule of Compliance for the transmission and area substations. The approved schedule to install and make operational treatment units shall be incorporated into and enforceable as part of this Order pursuant to paragraph III of this Order.

Appendix B.
Consolidated Edison Company of New York
Dunwoodie Substation
Natural Resources Damages
Restoration Plan
Responsiveness Summary

RESPONSIVENESS SUMMARY

INTRODUCTION

The Responsiveness Summary (RS) provides a summary of comments received during the public comment period related to the Consolidated Energy Company of New York (Con Edison) Dunwoodie Substation Natural Resource Damages (NRD) Restoration Plan (RP) and provides the response of the New York State Department of Environmental Conservation (NYSDEC) to those comments. The NRD funds were paid by Con Edison to NYS as a result of the November 4, 2009 spill of dielectric fluid (a petroleum product) from Con Edison Dunwoodie Substation. The dielectric fluid flowed through the Substation's storm water drainage system into the City of Yonkers storm water drainage system, and ultimately into the Bronx River, resulting in damages to the natural resources of NYS. A detailed summary of the spill event is documented in NYSDEC Spill Report No. 0908747 and a summary of the NRD settlement (No. R3-20100329NRD) is included in the July 2010 Order on Consent (Case No. R3-20100329-18). The comments presented in this document have been considered by NYSDEC and used to finalize the RP.

PUBLIC REVIEW AND COMMENT PERIOD

NYSDEC relies on public input to ensure that concerns of the community and stakeholders are considered in selecting a RP. The draft *Consolidated Edison Company of New York Dunwoodie Substation Natural Resources Damages Restoration Plan* was made available for public comment from September 10, 2014 through October 10, 2014 and included the July 2010 Order on Consent.

Public Comments on the draft RP were received via postal mail and e-mail. Each written submission received a commenter number (e.g. Commenter 1) in the order of receipt. In addition to being summarized in Table 1, copies of all written submissions are included in Attachment 1. The commenter number associated with each written submission is marked at the top of the first page of each letter and the sub-numbers of the individual comments are marked in the margin next to the text that begins the comment.

NYSDEC carefully considered each comment received and made every effort to be fully responsive.

ORGANIZATION OF COMMENT RESPONSES

Table 1 contains a complete listing of all comments and NYSDEC responses and is organized as follows:

- The first column lists the name of the commenter.
- The second column identifies the alphanumeric code assigned to each comment (e.g. 1.a, 1.b).
- The third column provides a summary of the comment.
- The fourth column provides the response to the comment.

Example:

Name/ Organization	Comment Code	Comment Summary	Response
John Doe	1.a.	The commenter expressed concerns related to spill prevention	Efforts will be taken to prevent future spills

Table 1. Responses to comments received on the draft *Consolidated Edison Company of New York Dunwoodie Substation Natural Resources Damages Restoration Plan, Bronx River, Westchester County NY*

Name/ Organization	Comment Code	Comment Summary	Response
Bronx River Alliance	1.	Commenter expresses approval for the projects outlined in the RP.	Comment is noted.
Consolidated Edison Company of New York (Con Edison)	1.	Commenter noted that the Dunwoodie Substation stormwater system travels through the municipal stormwater system which connects to the Bronx River.	RP text will be changed to indicate that the Substation stormwater system connects to the City of Yonkers stormwater system before entering the Bronx River
Con Edison	2.	Commenter asserts that the likely volume of dielectric fluid entering the Bronx River was a few hundred gallons.	RP text will be changed to reflect the language in the Order on Consent which states that “Approximately 15,000 gallons of dielectric fluid were released to the environment, some of which was discharged to the Bronx River.”
Con Edison	3.a.	Commenter asserts that the impacted reach of the Bronx River was 2.37 miles and not 8 miles as indicated in the draft RP.	RP text and figures will reflect the Order on Consent which states that “approximately a six-mile stretch of the Bronx River” was impacted.
Con Edison	3.b.	Commenter asserts that the most southerly boom depicted in draft RP figures was previously installed by a third-party.	The most southerly boom depicted in Figure 1 was previously installed by NYC Department of Environmental Protection. It will be removed from Figure 1.

Name/ Organization	Comment Code	Comment Summary	Response
Con Edison	4.	Commenter indicates that no dead or impacted wildlife were observed during clean-up activities.	Reference to fish kills will be removed from the RP as there were no documented fish kills in this incident. Benthic biota are considered wildlife and injury to “benthic organisms and other sediment dwellers” was included as an environmental injury in the Order on Consent.
Con Edison	5.a.	Commenter notes that RP references booms being saturated with oil and oil going around booms. Commenter also notes that Con Edison put forth effort to install numerous booms and those booms were replaced as they were saturated.	Comment is noted. The text will be changed to reflect Con Edison’s efforts to contain and clean-up the spill.
Con Edison	5.b.	Commenter notes that efforts were made to minimize trampling of vegetation and that areas affected were dominated by invasive species.	Comment is noted.
Con Edison	5.c.	Commenter notes that clean-up activities included removal of leaves and debris along a 2 foot wide swath of the river bank on both banks in the impacted area of the River.	Comment is noted. Leaves and debris are an important element of the riparian system, providing both food and cover for aquatic and benthic organisms. Removal of the leaves and debris, while necessary, was part of the environmental injury.

Attachment 1.
Comments Received on draft Restoration Plan



September 21, 2014

Jennifer Dawson
NYSDEC
47-40 21st Street
Long Island City, NY 11101-5407

**Re: Consolidated Edison Company of New York Dunwoodie Substation
Natural Resources Damages Restoration Plan**

Dear Ms. Dawson:

Thank you for the opportunity to comment on the Draft Natural Resources Restoration Plan for the Bronx River, to compensate for injuries to the natural resources of the Bronx River resulting from a spill of dielectric fluid from the Consolidated Edison Dunwoodie Substation in Yonkers.

The Bronx River Alliance serves as a coordinated voice for the river and works in harmonious partnership to protect, improve and restore the Bronx River corridor so that it can be a healthy ecological, recreational, educational and economic resource for the communities through which the river flows. As an Alliance, we work with partners, including the NYC Department of Parks and Recreation) to protect and improve the quality of the Bronx River.

1. We appreciate the opportunity to implement the three projects outlined in the plan: restoring natural resources in the impacted area, installing a trash boom to prevent debris and spills from traveling downstream, and providing weekly reconnaissance to assess conditions and identify problems for follow-up action. Sustaining a healthy and resilient forest ecosystem will better protect the river from ongoing stresses. The actions outlined in this plan will result in a net benefit to the ecology of the Bronx River as well as all impacted user groups.

Sincerely,

A handwritten signature in black ink that reads "Linda R. Cox".

Linda R. Cox, Executive Director

A handwritten signature in black ink that reads "Robin Kriesberg".

Robin Kriesberg, Ecology Director



Consolidated Edison Company
of New York, Inc.
4 Irving Place
New York NY 10003
www.conEd.com

October 10, 2014

Ms. Jennifer Dawson
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Re: Draft Restoration Plan
Dunwoodie Substation Incident
Consolidated Edison Company of New York, Inc.

Dear Ms. Dawson,

Consolidated Edison Company of New York, Inc. (Con Edison) is pleased to provide comments on the Draft Restoration Plan for the 2009 Dunwoodie Substation Incident, as published in the September 10, 2014, *Environmental Notice Bulletin*.

Con Edison offers the following comments related to proposed restoration:

Con Edison thanks the Department and the Bronx River Alliance for developing such a comprehensive restoration plan and agrees that the identified restoration project will provide a long-term net benefit to the Bronx River and surrounding community. Con Edison notes that, dating back to 2001, Con Edison has been a proud supporter of the Bronx River Alliance and their efforts towards restoring the Bronx River.

Con Edison offers the following comments related to the discussion of the dielectric fluid release:

1.
 - Page 1, 1st paragraph, 2nd sentence states that “[t]he fire resulted in a spill of dielectric fluid (a petroleum product) into the Bronx River via the station’s storm water drainage system (Figure 1).”

This sentence should be revised to reflect that the Dunwoodie Substation’s (the Station’s) storm water management conveyance system connects to the municipal storm water system, which in turn discharges into the Bronx River. Con Edison’s storm water conveyance system does not directly discharge into the Bronx River.

2.
 - Page 1, 2nd paragraph, 1st and 2nd sentences states “[t]he exact volume of dielectric fluid that entered the Bronx River is uncertain; however, estimates range from several hundred gallons to 16,000 gallons. The volume of oil burned in the fire is also unclear.”

The total volume of oil released during the event was 16,000 gallons. This includes the oil burned during the event, the oil recovered during on-site cleanup, and the oil discharged to the river. During the river cleanup activities, both the Department and Con Edison personnel agreed that the likely volume of product entering the river was a few hundred gallons and that the majority of the product was either lost during the fire or retained on-site. Therefore, these two sentences should be revised as follows:

"The exact volume of dielectric fluid that entered the Bronx River is uncertain. It is estimated that a few hundred gallons entered the river. It is assumed that the majority of the dielectric oil was either burned during the event or retained on-site; however exact volumes are not known."

- 3.a.**
- Page 1, 2nd paragraph, 3rd and 4th sentences state "[p]etroleum products entered the Bronx River just downstream of the Cross County Parkway and continued downstream to a point where the spill was observed at Hunts Point Riverside Park. The distance of the spill was calculated at 8.37 miles (Figure 1)."

3.b. These statements should be clarified to accurately reflect the impacts of the spill. The section of boom spanning the river near the Hunts Point Riverside Park was previously installed by a third-party for reasons unrelated to the Dunwoodie incident; For precautionary reasons, Con Edison and Department field inspectors monitored this third-party boom during cleanup activities. The impacted section of river extended from the point-of-entry near the Station downstream as far as Route 1 (Fordham Road) in the Bronx for a distance of 2.37 miles. This was agreed upon by Department representatives during the cleanup activities.

- 4.**
- Page 1, last paragraph, 1st sentence states "[t]he spill of dielectric fluid into the Bronx River in November 2009 impacted 8.37 miles of the Bronx River (Figure 1) and resulted in direct injuries, including fish kills and injuries to vegetation and benthic biota."

As previously clarified, the impacted section of river was 2.37 miles. During routine monitoring activities conducted by Con Edison and the Department, no dead or impacted wildlife was observed during the clean-up activities. To further ensure no wildlife was impacted during the clean-up, Con Edison retained Tri-State Bird Rescue & Research. Tri-State confirmed that no wildlife was directly impacted by the spill.

- 5.a.**
- Page 2, 1st (partial) paragraph, the first three full sentence states that, "[s]ome oil went around the booms and some of the booms were quickly saturated with oil. In forested locations, leaves and other organic material were covered with oil. Riparian vegetation along the banks of the River was trampled and physically impacted by the personnel responding to the spill."

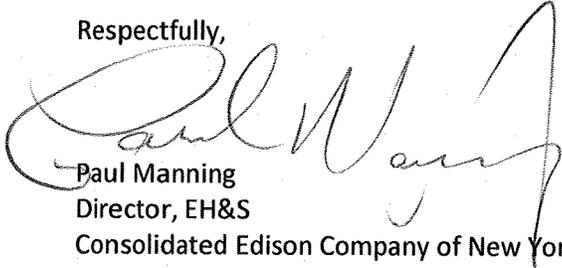
While the booms became saturated with oil and leaves and other organic debris were covered with oil, Con Edison continually monitored all boom locations to ensure effectiveness and replaced booms as needed. In addition to using booms to capture and contain the product, Con Edison deployed boats, oil-simmers, and vacuum trucks at strategic locations along the banks of the river to facilitate cleanup activities.

- 5.b.** Establishing strategic clean-up stations not only facilitated river clean-up activities, it also minimized impacts, such as trampling, to the riparian vegetation communities along banks of the river. While some trampling of vegetation did occur it should be noted that the majority of these areas were dominated by Japanese Knot Weed (*Polygonum cuspidatum*), which is listed by the Department as an invasive species.

- 5.c.** It should also be noted that as part of the clean-up activities Con Edison removed all leaves and debris within two feet from the top of river elevation, along both banks and within the impacted section of the river. In all a total of over 14,000 bags of leaves and other debris were removed and properly disposed.

Con Edison appreciates the opportunity to provide these comments. Should you have any questions concerning the issues raised above, please contact Mr. Brian Brush at 212-460-6059. If a meeting or conference call would help to finalize the Draft Restoration Plan, Con Edison staff members would welcome an opportunity to participate.

Respectfully,

A handwritten signature in black ink, appearing to read "Paul Manning". The signature is fluid and cursive, with a large initial "P" and "M".

Paul Manning
Director, EH&S
Consolidated Edison Company of New York, Inc.