

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of Articles 17  
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 370, et seq., 610, 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. D2-0003-96-12, et seq.

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ORDER ON CONSENT  
(Supplementing  
Order on Consent Dated November 4, 1994  
DEC Index No. R2-1023-88-06, et seq.)

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of Article 17 of the :  
New York State Environmental Conservation :  
Law and Article 12 of the Navigation Law and of the :  
regulations promulgated pursuant thereto at Parts 610, : ORDER ON  
et seq., 700, et seq. and 750, et seq. of : CONSENT  
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 - : DEC Index No.  
:  
Consolidated Edison Company of New York, Inc., et seq. : D2-0001-96-11  
:  
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 ("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. It is the responsibility of the Department to conserve, improve and protect New York's natural resources and environment and control water, land and air pollution

Corporate Environmental Procedures and a similar number of General Environmental Instructions which provide hands-on guidance for implementing the Environmental Procedures; installed a computerized incident tracking and reporting system (E2MIS); initiated a series of root cause analyses to discover trends and apply effective corrective actions; developed compliance plans for major facilities; appointed over 70 environmental managers to assist operation's management in environmental compliance and excellence programs and established environmental goals for each Company Department.

8. This Order on Consent is a supplement to the comprehensive Order on Consent executed on November 4, 1994 and reflects Con Edison's policy of open communications and cooperation with the Department and the Company's willingness to commit, through the mechanism of an Order on Consent, to programs that will help achieve full compliance with applicable environmental laws and regulations and also advance the Company's goal of demonstrating leadership and excellence in environmental protection.

9. Despite Con Edison's commitment to full compliance with environmental laws and regulations, and to environmental excellence, and despite the progress the Company has made toward attaining these goals, since November 4, 1994, Con Edison has:

(a) discharged petroleum products into the environment and failed to immediately contain such discharges. Such discharges include the following events:

(i) DEC spill no. 9411975 where approximately 39,580 gallons of #6 fuel oil was released on December 7, 1994, from an underground pipeline during the transfer of oil from the Rainey Tank Farm to the #30 boiler.

(ii) DEC spill no. 9510743 where approximately 10,000 gallons of #6 fuel oil was released from Con Edison's No. 3 underground fuel oil pipeline on November 27, 1995. As the result of this spill, Con Edison decided to permanently retire the No. 3 fuel oil pipeline.

Central Collection Facilities (Flush Truck Facilities) without using the prescribed hazardous waste manifest form in violation of 6 NYCRR § 372.2(b)(1).

(f) In September 1996, Con Edison engaged the services of an unqualified lead abatement contractor which resulted in the following:

(i) improper disposal of hazardous wastes in violation of 6 NYCRR §372.2(a)(8)(ii)(a);

(ii) release of hazardous wastes to the East River in violation of 6 NYCRR §373-3.3(b);

(iii) a container accumulating hazardous wastes was stored in a manner causing it to lead in violation of 6 NYCRR §373-3.9(d)(2);

(iv) hazardous waste was transported without a hazardous waste manifest in violation of 6 NYCRR §372.2(b)(5)(i); and

(v) hazardous waste was transported by an unpermitted transporter in violation of 6 NYCRR §372.2(b)(5)(ii)(a).

(g) On May 21, 1997 Con Edison reported to the Department that a barge transporting corrosive wastes was moored at the Astoria Facility for more than ten days in violation of 6 NYCRR §373-1.1(d)(1)(xv).

10. Con Edison 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:**

**ARTICLE I. PENALTY**

1. Con Edison shall pay the amount of three hundred eighty five thousand dollars (\$385,000.00) to the Department within thirty (30) days of the effective date of this Order by certified checks or money orders made payable as follows: one hundred thousand dollars (\$100,000.00) to "Marine Resources Account of the Conservation Fund" and two hundred eighty five thousand (\$285,000.00) to "Department of Environmental

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 Con Edison 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 Con Edison to remedy any alleged deficiency.

4. When any Submittal is disapproved by the Department, Con Edison 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 Con Edison. Such Revised Submittal shall address each deficiency noted in the Department's notice.

5. Within thirty (30) 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 Con Edison 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 Con Edison fails to accept the modifications sought by the Department within ten (10) days after its receipt of the Department's written notification, Con Edison shall be considered to be in violation of the terms of this Order, without prejudice to Con Edison's right to contest such determination in accordance with **Article V [DISPUTE RESOLUTION]** of this Order.

2. Any schedule established by or pursuant to this Order shall be deemed amended to allow Con Edison 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 Con Edison 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 Con Edison will both sign a simple instrument that reflects the extent of the extension.

5. For purposes of this Paragraph, with respect to Con Edison's conduct relative to obtaining any Other Approval, Con Edison 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 III [STIPULATED PENALTIES], and Article VI [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 Con Edison to accede to any requirements, demands or conditions of a governmental entity that are arbitrary, capricious or otherwise unlawful.

C. Imposition of Penalties for Failures to Comply.

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

<u>Event</u>	<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
Major Milestone	Day 1-30	\$1,500.00
	Day 31-60	\$3,000.00
	Day 61 and thereafter	\$7,500.00
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 Con Edison either performs the required activities or completes corrective action satisfactory to the Department. In the event that the Department determines that Con Edison has failed to comply with any term of this Order or any approved work plan, schedule or protocol, the Department will serve upon Con Edison 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, Con Edison shall deliver the full stipulated penalty amount due to the Department, unless Con Edison pursues its rights to contest the penalty assessment as described hereafter in Article V [DISPUTE RESOLUTION] of this Order. In the event that Con Edison does not pay the stipulated penalty within such 21-day period and does not contest the penalty

days of the Department's determination and Con Edison hereby expressly waives its right to the four (4) month period provided in CPLR § 217 for commencing a review of an agency determination.

B. 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, Con Edison may 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 XIII [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 Con Edison 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 Con Edison.

3. The Regional Director will meet with Con Edison and Staff representatives as soon as practicable after receipt of the Staff's response to Con Edison's written request, but in no event later than ten (10) business days after receipt of the response and consider any information presented by Con Edison and Staff in resolving the dispute. The Regional Director will notify Con Edison 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 Con Edison prevails with respect to the dispute, in which case, no stipulated penalties shall become due. In the event that Con Edison 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 Con Edison's failure to comply with the terms of this Order to the date of Con Edison's receipt of the Regional Director's decision; or (2) reduce the amount



B. Con Edison Health and Safety and Operational Requirements

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

C. Access

1. Upon presentation of appropriate Department credentials, Department Staff will have access to all Con Edison 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 Staff may deem appropriate for ascertaining Con Edison's compliance with the provisions of this Order.

2. Con Edison is prohibited from imposing upon Department Staff a requirement regarding the use of safety apparel or safety equipment that is not strictly enforced by Con Edison with respect to all other persons, regardless of employer, under similar circumstances. Con Edison 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, Department Staff will undergo safety and health training required of Con Edison personnel or Con Edison contractor personnel prior to being given access to a particular facility or site, subject to the following:

(a) Upon notification by Con Edison to the Department of the mandatory training requirement(s) for such access, Con Edison 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 Staff access. In the event that the Department determines that such training is not reasonable and necessary or required under applicable

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

**ARTICLE VII. FORCE MAJEURE.**

Con Edison 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 Con Edison'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 Con Edison was not the proximate cause; provided, however, that Con Edison 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 VIII. FAILURE, DEFAULT AND VIOLATION OF ORDER.**

The failure of Con Edison 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 IX. 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 X. INDEMNIFICATION.**

Con Edison 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 Con Edison, its trustees, officers, employees, servants, agents, successors or assigns.

**ARTICLE XI. EFFECTIVE DATE.**

The effective date of this Order on Consent shall be the date that it is signed by the Commissioner. The Department shall provide Con Edison with a fully executed copy

C. Communication to be made from the Department to Con Edison 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 M. Peter Lanahan, Vice President, Environmental Affairs, Consolidated Edison Co. of New York, Inc., 4 Irving Place, New York, New York 10003, attention: Mr. Howard Somers.

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

#### **ARTICLE XIV. 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 Con Edison 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 Con Edison's facilities or areas in the vicinity of said facilities other than the four (4) petroleum releases identified in Whereas clause 9(a) above;

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 Con Edison, 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 Con Edison, its officers, trustees, agents, servants, employees, successors or assigns in the event that Con Edison 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

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

**ARTICLE XVI. BINDING EFFECT OF ORDER.**

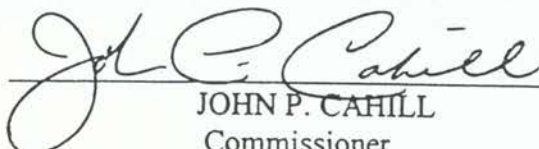
The provisions of this Order shall inure to the benefit of and be binding upon the Department and Con Edison, its agents, employees, successors and assigns and all persons, firms, and corporations acting subordinate thereto.

**ARTICLE XVII. FORMAL TERMS.**

The provisions hereof shall constitute the complete and entire Order between Con Edison 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 XII [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 Con Edison shall be construed as relieving Con Edison of its obligations to obtain such formal approvals as may be required by this Order.

DATED: Oct 23, , 1997

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

  
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JOHN P. CAHILL  
Commissioner

## APPENDIX 1 - Benefit and Restoration Projects

### I. Environmental Benefit Project

#### A. Objective

Within sixty (60) days of the effective date of this Order, Con Edison shall deposit the amount of three hundred forty five thousand dollars (\$345,000.00) with the Nature Conservancy 1500 Broadway, Suite 808, New York, New York 10036, a corporation organized and existing under the New York State Not-For-Profit Corporation Law to be used to fund an Environmental Benefit Project (EBP). The monies will be expended on an EBP that will create a regional Natural Resources and Spills Response Geographic Information System (GIS) as discussed below.

It is extremely important that in the event of an oil or chemical spill that response resources be directed to those areas that are most sensitive and valuable as wildlife habitat. These sensitive areas include tidal wetland complexes where many species of fish are spawned and where many of the Harbor Herons forage and hunt. Unfortunately, the maps of these complexes and areas exist only as hundreds of paper maps or aerial photographs that are fragile and difficult, at times, to interpret. Other natural resource data that is crucial in mounting an adequate response to spills only exists as antiquated paper maps or as tables of data not spatially referenced.

When completed, the GIS will contain all pertinent natural resource and spills response information and maps for the five boroughs of New York City and the lower Hudson River estuary up to the Tappan Zee bridge. Data layers will include Tidal Wetland Maps, Freshwater Wetland Maps, Endangered Species Information, Land Use/Land Cover, Permitting Information, Critical Environmental Areas, Soils, marine Bathymetry, Environmental Sensitivity Indices, significant spill sites, ground elevation contour lines, groundwater depth contour lines, Petroleum Bulk Storage sites, Chemical Bulk Storage sites, and all major fuel oil and natural gas pipelines in New York City. Base map layers will include USGS Topology Maps, USGS Quadrangle maps, Sanborn Maps, Tax Maps, US Census Bureau's TIGER Line file and Census Tract and NYC Lion file; and possibly aerial or satellite photography. This project is currently funded through the completion of most of these above layers for the borough of Staten Island.

This system will be an integral tool in planning for and responding to oil and chemical spills in the New York Harbor and lower Hudson River Estuary up to the Tappan Zee bridge. The Natural Resources and Spills Response GIS will allow regulators to quickly make regulatory decisions that might otherwise take hours or days to complete. These tasks include jurisdictional boundary checks, cumulative impact assessment, permit searches, violation tracking and expedited spills clean up decision making. The system will further benefit the public and the regulated community in that this digital information (maps) will be available to local, state, federal agencies, permittees, to Con Edison and to other interested parties pursuant to section 87 of the

This data is already digitized but must be edited and corrected to be utilized. This data will be purchased from a third party vendor.

9. Depth of Groundwater

Data Editing and Correction and Digitization: This data can be purchased, but only in its raw form. The raw data will be converted to a useable form before being digitized.

10. Topography

Map Digitization: Maps covering the New York City area currently exist as image files and will be digitized.

Map Correction: After digitizing, the maps will be corrected and transformed to local coordinate systems.

11. Spill Sites

Data Editing and Correction: Separate minor surface spills from the database, edit address data to conform to guidelines, and convert data. The data must then be digitized.

12. Routine Systems Administration

The GIS will require daily maintenance and updates

13. Network Installation, Configuration and Troubleshoot

Install, configure and troubleshoot a dial-in / dial-out connection for remote access of GIS.

**C. Fiscal Requirements**

Funding for this project will be expended as follows:

1. Staff Requirements

Project Manager, 3 years @ \$65,000/year (total cost w/ overhead and benefits)

Project Technician, 3 years @ \$35,000/year (total cost w/ overhead and benefits)

2. Material Requirements

Data layer acquisition: \$25,000

Plotting, scanning and printing equipment: \$20,000

3. Total Costs: \$345,000.00

**II. Restoration Project**

Con Edison shall pay the amount of fifty eight thousand dollars (\$58,000) to the Department within thirty (30) days of the effective date of this order, so the Department as Trustee of New York's natural Resources, can restore, replace, or acquire the equivalent of the resources indured as a result of the releases referenced in Whereas clause 9(a) above. Such payment shall be made by certified check made payable to Natural Resources Damages Fund Account and delivered to the Department's offices at 50 Wolf Road, Albany, NY 12233-5500, Attention: Joseph M. Kowalczyk, Esq.

6. participating in informational meetings and public hearings regarding Con Edison's facilities;
7. initiating and participating in enforcement actions related to Con Edison's operations; and
8. maintaining records and reports, including a monthly report, for the activities described above.

### **C. Funding**

Additional funds shall be deposited into the existing Con Edison Environmental Monitoring Account as provided by this Paragraph:

1. The sum of two hundred fifty thousand dollars (\$250,000.00) shall be maintained with the Department for funding of environmental activities related to Con Edison's operations. This sum is based on an estimate of annual Monitor program costs and is subject to quarterly revision. Subsequent quarterly payments shall be made for the duration of this order to maintain an account balance sufficient to meet the next nine months' anticipated expenses. Quarterly payments shall be made for the duration of this order in accordance with the following provisions.
2. Costs to be covered by this fund include:
  - (a) Direct personal service costs and fringe benefits of the Environmental Monitor(s) and full-time Monitor supervisor(s), including the costs of replacement personnel for the person(s) regularly assigned to these positions.
  - (b) Direct non-personal service costs, including without being limited to purchase or lease of a vehicle if necessary and its full operating costs, and any appropriate chemical sampling and analysis.
  - (c) Inflation increases and negotiated salary increase.
  - (d) Indirect support or overhead costs at the New York State Department of Environmental Conservation Federally-approved Indirect Cost Rate.
3. Upon written request by Con Edison, the Department shall make available any records (e.g., vouchers, time records) relating to such Monitor costs, consistent with applicable law.
4. As noted, the Department may revise the required payment on a quarterly basis to include all costs of monitoring to the Department. The quarterly revision may take into account factors such as inflation, salary increases, accrued interest to be applied to the balance, changes in operating hours and procedures and the need for additional On-site Monitors and supervision of such Monitors by full-time Monitor supervisors. Upon written request by Con Edison, the Department shall provide Con Edison with a written explanation of the basis for any modification.

## APPENDIX 3 - FUEL OIL PIPELINES

### A. Objective

This Appendix supplements and supersedes Appendix C of the November 4, 1994 Consent Order. ConEd shall implement best management practices, submitted in accordance with the provisions of the Conceptual Compliance Plan, with respect to the operation, inspection, maintenance and replacement of its pipeline systems used to transport petroleum between and among its various facilities and generating stations. Such improvements and corrective measures are the responsibility of ConEd and shall be accomplished to the greatest extent practicable within the shortest possible time frames.

### B. Definitions

For purposes of this Appendix, the following terms shall have the meanings set forth in this Paragraph.

1. "Aboveground oil pipeline" means any part or section of pipeline that is not entirely or partially covered with earth or other material, or any part or section of pipeline that can be inspected in a subterranean vault or underground tunnel.

2. "Material failure" means degradation of pipeline integrity due to corrosion, erosion or structural failure causing a leak to develop not due to the actions of ConEd, its contractors or other parties related to the pipeline.

3. "New underground oil pipeline" means any part or section of pipeline that meets requirements promulgated or approved by the federal, state or local jurisdictional agency as of the effective date of this Order and, at a minimum, has the following attributes<sup>1</sup>:

(a) the pipeline shall be constructed of fiber reinforced plastic ("FRP") pipe enclosed within a steel casing ("secondary containment") made of steel pipe having a wall thickness consistent with ConEd's specifications for the pressure and temperature of the fuel oil to be handled per ASTM Specification A, 106 Grade B.

(b) the pipeline shall be insulated by filling the annular space between the FRP pipe and the steel casing, such insulation to meet or exceed the capabilities of the insulation on existing oil piping within the ConEd Oil Pipeline System;

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<sup>1</sup> The inner FRP pipe is not subject to electrolytic corrosion and does not require cathodic protection.



pipeline within a subterranean vault or tunnel accessible for inspections is considered to be an aboveground oil pipeline.

8. "Section" means that length of the pipeline that exists between two adjacent field welds.

9. "Smart-Pig" means a device that contains transducers capable of measuring wall thickness of steel pipe to industry standard tolerances or the use of such device.

**C. Provisions Regarding Pipeline System Requirements**

**1. General Provisions.**

(a) **Implementation Submission - Conceptual Compliance Plan** - Con Ed has submitted its Conceptual Compliance Plan to accomplish the tasks identified at the top of the columns in SCHEDULES C1 and C2, at the end of this Appendix. This submission includes the organizational structure and accountability mechanisms for the management of all tasks required by this Appendix, the purpose of which are to assure the implementation of the protocols and physical plant and operational modifications to the entire pipeline system. The Conceptual Compliance Plan has been approved by the Department, and except as otherwise modified by the provisions of this Appendix, shall be implemented by Con Ed.

(b) **Department Review and Approval** - Con Ed's submissions required by this Appendix shall be reviewed and approved by the Department in the manner provided by Article VII [SUBMITTAL REVIEW AND APPROVAL] of this Order.

(c) **Temporarily Out of Service Oil Pipelines** - Pipelines that are Temporarily Out of Service are subject to the licensing, inspection and reporting requirements required by this Appendix and by regulations which may be applicable. However, Temporarily Out of Service oil pipelines that have the bulk fuel oil removed from them are not subject to inspection requirements. (See 3(h) below.)

(d) **Permanently Closed Oil Pipelines** - Pipelines which have been Permanently Closed in accordance with the provisions of this Appendix are no longer subject to the requirements of this Appendix.

(e) **Quarterly Reports; Semi-Annual Reports; Annual Reports** - Commencing ninety (90) days after execution of the November 4, 1994 comprehensive order, ConEd submitted consolidated, quarterly reports which update SCHEDULES C1 and C2. This quarterly update was submitted until December 31, 1996; thereafter,

sessions and the means and frequency of testing proficiency and understanding of employees whose responsibilities relate in any way to pipeline operation.

(c) **Pipeline Monitoring Report** - A Pipeline Monitoring Report shall document the manner and frequency of operation oversight and maintenance of each pipeline, associated process control equipment and automatic monitoring equipment as well as the means of determining pipeline stability and performance relative to loss of material from or degradation of the pipeline. The Pipeline Monitoring Report format has been submitted to the Department and is under Department review.

(d) **Spill Response, Emergency Shutdown and Alternate Fuel Contingency Drills** - A spill response and emergency shutdown drill program is required in which spill response drills, incorporating emergency pipeline shutdown and an alternate fuel supply contingency, are performed as frequently as necessary to assure the most rapid cessation, containment and remediation response possible in the event of a discharge. These drills shall test the plans required in paragraph C.2(f) of this appendix.

To satisfy the requirements of this paragraph, Con Ed has submitted an "Oil Spill Response Exercise Program" as part of a submission entitled "Emergency Shutdown/Spill Response Drills", to the Department for review and approval.

(e) **Operations Manual Review and Update** - ConEd's oil pipeline operations manual shall be reviewed and updated for the purpose of determining that the pipeline operations and management programs and the inspection and maintenance programs required by this Appendix will be carried into effect and become an integral part of ConEd's standard practices. The oil pipeline operations manual shall include current information on the operation and maintenance of the entire oil pipeline system. This manual shall include a section on management approval which specifically identifies all ConEd departments that are responsible for the reviewing, updating and implementing the procedures established by the manual. Con Ed has previously submitted the administrative procedures for the development of a Fuel Oil Pipeline Operations Manual and the Operations Manual to the Department for review and approval.

(f) **Spill Response Plans Review and Update** - Spill response plans are required which include emergency pipeline shutdown plans and fuel supply contingency plans designed to deliver oil to generating stations for continued operation, while a leaking pipeline is out of service for repair or replacement.

Con Ed has submitted its "Emergency Fuel Supply and alternative Fuel Contingency Plans" which are under Department review.

quarterly. Administrative procedures to implement the requirements of this paragraph and technical procedures have previously been submitted the Department for review and approval.

(e) **Equipment, Pump and Valve Maintenance** - The maintenance procedures will identify inspections or tests along with their required frequency, and the required maintenance activities along with their required frequency. Updated or newly developed maintenance procedures for ConEd's fuel oil pipeline equipment, pumps, heaters and valves have previously been submitted to the Department for review and approval. Upon their approval, Con Ed shall implement such procedures on all oil containing pipelines, both active and Temporarily Out of Service pipelines.

(f) **Spill Response Equipment Inspection** - ConEd shall inspect spill response equipment and document such inspections in accordance with its current OPA-90 Spill Response Plan. Documentation of these inspections shall be made available to the Department upon request. Con Ed has submitted Administrative procedures to the Department for review and approval to ensure that these inspections are conducted.

(g) **Inspection of Aboveground Pipelines and Street Valves** - Regular inspections shall be performed on the aboveground sections of pipelines and street valves on all pipelines containing oil, both active and Temporarily Out of Service oil pipelines. Inspection procedures for the aboveground pipelines and street valves have been reviewed, updated and submitted to the Department for review and approval.

(h) **Inspection of Temporarily Out of Service Oil Pipelines** - ConEd shall continue to inspect its Temporarily Out of Service Oil Pipelines until ConEd removes the bulk fuel oil from the pipeline. Documentation of these inspections shall be made available to the Department upon request. Within 60 days of the effective date of this Order, ConEd shall submit their procedure for inspecting the Temporarily Out of Service Oil Pipelines.

#### 4. **Special Provisions: Corrective Actions**

(a) **Replaced Pipelines** - The following sections of the pipeline system have been replaced with New Underground Oil Pipeline:

(i) the underground section of the No. 2 line from the Manhattan Headhouse at 71st Street to the 74th Street Station; and

(ii) the No. 5 pipeline from Kips Bay to the Waterside Generating station. This replacement included both the fuel oil supply line and the return line.

Department, for review and approval, ConEd's proposed methods and schedules for the bulk oil removal from Nos. 1 and 7 pipelines.

(c) **No. 2 Pipeline** - The portion of the No. 2 pipeline from the Head House at 71st Street, along the east side of the FDR Drive, to the 74th Street Generating Station, is temporarily out of service and shall be permanently closed. (This portion has been replaced by a new portion of pipeline, now in service, which runs along the west side of the FDR.) The bulk oil has been removed and the pipeline has been cut and capped at each end. Within sixty (60) days of the bulk oil removal from pipelines 1,3,7 (whichever is completed last), ConEd shall submit a plan to the Department for review and approval to permanently close this pipeline.

(ii) **Pipeline Integrity Test** - ConEd shall perform a pipeline integrity test to identify and locate any leaks and potential areas of concern in the pipeline in accordance with the following schedule.

(a) **No. 3 Pipeline** - Within 60 days of removing the bulk oil from the No.3 pipeline, ConEd shall submit, for Department review and approval, a description of the method and schedule to perform the Pipeline Integrity Test on the No. 3 pipeline.

(b) **No. 1 Pipeline** - Within 60 days of removing the bulk oil from the No. 1 pipeline, ConEd shall submit, for Department review and approval, a description of the method and schedule to perform the Pipeline Integrity Test on the No. 1 pipeline.

(c) **No. 7 Pipeline** - Within 60 days of removing the bulk oil from the No. 7 pipeline, ConEd shall submit, for Department review and approval, a description of the method and schedule to perform the Pipeline Integrity Test on the No. 7 pipeline.

(iii) **Removing Residual Fuel Oil and Cleaning the Pipelines**

(a) **No. 3 Pipeline** - Within 30 days of the completion of the integrity test on the No. 3 pipeline, ConEd shall submit to the Department, for review and approval, ConEd's proposed method and schedule for removing the residual fuel oil and cleaning the pipeline.

(b) **No. 1 Pipeline** - Within 30 days of the completion of the integrity test on the No. 1 pipeline, ConEd shall submit to the Department, for review and approval, ConEd's proposed method and schedule for removing the residual fuel oil and cleaning the pipeline.

removal actions, ConEd shall provide the Department with verbal notification and subsequent written confirmation describing the IRM or removal actions. With the exception of circumstances outside the control of ConEd, ConEd shall make best efforts to provide the Department with an opportunity to visually inspect the site prior to backfilling excavations.

(vi) **Pipeline Right-of-Way (ROW) Investigation and Remediation** - As part of paragraph (v), ConEd will identify areas of potential environmental concern based on information presently known or obtained upon subsequent investigation of historic or current leaks. For each pipeline proposed for closure, ConEd shall submit work plans for the investigation and, if necessary, remediation of the ROW and adjacent areas of each pipeline or any non-adjacent areas that are contaminated by a former leak from the pipeline.

The investigation and, if necessary, remediation of spill sites along the pipelines' ROW identified in Appendix B of the November 4, 1994 Consent Order, and known spills that have occurred between November 4, 1994 and the effective date of this order, shall be addressed in each pipeline's investigation work plan submitted in accordance with the requirements of this Appendix. The pipelines' ROW investigation and, if necessary, remediation will be performed in accordance with the manner discussed in Appendix B of the November 4, 1994 Consent Order and in accordance with the schedules submitted with the investigation work plans.

(vii) **Pipeline Closure** - A pipeline shall be considered Permanently Closed upon the completion of all the work described in section C.4(c) of this appendix.

(d) **Repair Actions for Problem Sections of Piping** - In the event that there are two leaks due to material failure in any section of any of its operating or Temporarily Out of Service Pipelines within a calendar year, ConEd will sleeve, remove or replace the entire section in which such leaks occurred. In all instances in which a thin wall condition is determined to exist on a pipeline, ConEd will repair the thin wall in accordance with the requirements of Specification FOPL 100.

(e) **Provisions for Cleaning** - The "New Underground Oil Pipeline", the "Upgraded Underground Pipeline" and the repaired underground pipeline shall be capable of being cleaned using an internal pig device.

(f) **Leak Detection Systems** - On October 6, 1995 ConEd submitted to the Department a preliminary engineering evaluation of the leak detection systems for ConEd's fuel oil pipelines. This evaluation included a review of the performance of the micro motion mass flow meters that have been installed on the No. 4 and No. 5 lines, a review of the performance of the positive displacement flow meter system on the No. 2,

**SCHEDULE C1**

**OIL PIPELINE OPERATIONS AND MANAGEMENT SCHEDULE**

Pipeline System Description	Report on Personnel Training	Pipeline Monitoring Report	Emergency Shutdown/Spill Response Drills	Operations Manual - Review & Update	Spill Response Plans Review & Update
Line No. 1 Astoria GS to Ravenswood GS					
Line No. 2 74th St GS to Ravenswood GS					
Line No. 3 Hudson Ave GS to East River GS					
Line No. 4 East River GS to Kips Bay Station					
Line No. 5 Waterside GS to Kips Bay Station					
Line No. 7 North 1st St Terminal to Ravenswood GS					

**D. Department Response to NonCompliance**

1. **Penalty Adjustment** In the event that the Department institutes an enforcement action for any discharge of oil from Con Edison's fuel oil pipelines, the Department will, in determining the amount of the penalty to be assessed or imposed against Con Edison, take into consideration, to the maximum extent consistent with the Department's penalty policies and guidance, Con Edison's cooperation in the negotiation of this Order and its efforts to improve the environmental performance of its fuel oil pipeline system.

2. **Limited Immunity** - Except as provided in subdivision (3) of this section, the Department will not seek any civil or administrative penalties from Con Edison for the following discharges of oil to the environment from Con Edison's fuel oil pipelines:

- A. any past discharge discovered during the ROW investigation for a pipeline;
- B. any past discharge discovered during the repair, replacement, upgrading, or permanent closure work for a pipeline; and
- C. any discharge of 100 gallons or less of oil that occurs prior to the completion of the repair, replacement, upgrading, or permanent closure work required by this Appendix, for the section of pipeline from which the discharge has occurred.

3. **Exclusions** - Notwithstanding anything to the contrary in this Order, the provisions of subdivisions 1 and 2 of this section shall not apply to the following :

- (a) Discharges that are determined by the Department to have been committed with any of the culpable mental states defined in Penal Law Section 15.05 or caused by reckless conduct or gross negligence;
- (b) Discharges caused by failure to comply with the requirements of this Order;
- (c) Discharges for which Con Edison fails to provide notification to the Department in the manner specified in this Order or applicable regulations;
- (d) Discharges for which Con Edison fails to conduct remediation in the manner specified by the Department; and
- (e) Discharges that contaminate the waters of the State or any sewer draining into the wastes of the State.

- (f) Contain drawings identifying the location of the recommended best SPDES monitoring point for each such waste stream;
- (g) Contain Con Edison's proposed timetable for installing and using each new best representative SPDES monitoring point recommended in the report;
- (h) Contain Con Edison's proposed corrective action plan and implementation schedule for obtaining SPDES authorization from the Department for any unauthorized discharges of pollutants to the waters of the State or unauthorized outfall structures discovered at the facility during the required survey or eliminating any such discharges or outfall structures; and
- (i) Contain Con Edison's proposed corrective action plan and implementation schedule for ensuring its compliance with the applicable effluent limitations of the facility's SPDES permit in the event that sampling at any new best representative SPDES monitoring point recommended in the report is expected to detect pollutants in concentrations exceeding such effluent limitations.

#### **D. Follow Up Corrective Action**

##### **1 Implementation of Approved Plans**

Upon the Department's approval of the outfall survey report for a facility listed below in Table 1, Con Edison shall in accordance with the approved report's timetable and/or corrective action plan implementation schedules:

- (a) commence and complete the installation of each new best representative SPDES monitoring point identified in the approved report and begin using each such new monitoring point;
- (b) eliminate each unauthorized discharge of pollutants to the waters of the State and each unauthorized outfall structure identified in the approved report or apply to the Department for SPDES permits or SPDES permit modifications authorizing such discharges and outfall structures; and
- (c) commence and complete the approved report's corrective action plan for ensuring compliance with applicable effluent limitations at the required new best representative SPDES monitoring points, unless the plan calls for the installation or modification of water pollution control equipment, in which case, Con Edison shall implement the plan as provided below in subdivision (2) of this section.

##### **2 Water Pollution Control Equipment**

Notwithstanding anything to the contrary in this Appendix, if any corrective action plan contained in an approved outfall survey report calls for the installation of new water pollution control equipment or the modification of existing water pollution control equipment, the plan shall be implemented as follows:

- (a) Upon the Department's approval of the outfall survey report containing the plan, Con Edison shall begin designing the new or modified equipment called for in the



use of the new best representative SPDES monitoring points, unless that date is extended pursuant to the provisions of **ARTICLE III [SUBMITTAL REVIEW AND APPROVAL]**, **ARTICLE VII [FORCE MAJEURE]**, or **ARTICLE XII [MODIFICATION]** of this Order, in which case, the temporary authorization provided for herein shall expire on the revised deadline date.

## **2 Discharges and Outfall Structures**

Except as otherwise provided in subdivision (3) of this subsection, the Department's approval of the outfall survey report for a facility listed below in Table 1 shall constitute temporary authorization for Con Edison:

- (a) to operate any unauthorized outfall structures identified in the approved report until such time as it completes the approved report's corrective action plan for such outfall structures;
- (b) to discharge to the waters of the State any unauthorized discharges of pollutants identified in the approved report until such time as it completes the approved report's corrective action plan for such discharges; and
- (c) to discharge to the waters of the State, until such time as it completes the approved report's corrective action plan for ensuring compliance with effluent limitations, any discharges of pollutants that the approved report indicates are expected to exceed applicable effluent limitations at the new best representative SPDES monitoring points identified in the approved report.

During Con Edison's implementation of an approved report's corrective action plan for discharges expected to exceed applicable effluent limitations, Con Edison's compliance with the effluent limitations for such discharges shall be determined on the basis of monitoring conducted at the existing SPDES monitoring points for the discharges. If the monitoring results from the existing SPDES monitoring points do not detect pollutants in concentrations exceeding the applicable effluent limitations, Con Edison shall be deemed to have complied with those effluent limitations.

The temporary authorization provided for in this subdivision is conditioned upon Con Edison's compliance with the requirements of this Appendix and its timely implementation and completion of an approved report's corrective action plans for such outfall structures and discharges. For corrective action plans, other than those calling for the submission of applications to the Department for SPDES permits, SPDES permit modifications, or permission to install and use new or modified water pollution control equipment, such temporary authorization shall continue in effect until no later than the date specified in the corrective action plan's approved implementation schedule as the deadline for completing the plan, unless that date is extended pursuant to the provisions of **ARTICLE III [SUBMITTAL REVIEW AND APPROVAL]**, **ARTICLE VII [FORCE MAJEURE]**, or **ARTICLE XII [MODIFICATION]** of this Order, in which case, such temporary authorization shall continue until no later than the revised deadline date.

For any corrective action plan calling for the submission of an application requesting a SPDES permit or SPDES permit modification by the Department, temporary authorization for the unauthorized discharges or unauthorized outfall structures

pursuant to any temporary authorization provided to it under the provisions of Section F(2) of this Appendix.

TABLE 1

**Deadline for Submitting Outfall Survey Report to  
the Department from Effective Date of Order**

270 days	Astoria Site
270 days	East River Site
270 days	Arthur Kill Site
365 days	Ravenswood Site
365 days	60th Street Steam Plant
365 days	North First Street Terminal
365 days	Gowanus Gas Turbines
365 days	Narrow Gas Turbines
365 days	11th Street Tunnel

Any section of underground petroleum piping that is not currently equipped with the necessary fittings or access structures to perform tightness testing shall be retrofitted with such fittings and structures, as provided below in Section D.

**D. Required Submissions**

1. **Conceptual Compliance Plan** - Within 180 days of the effective date of this Order, Con Edison shall submit to the Department for its review and approval in accordance with the provisions of Appendix II [Submittal Review and Approval] of this Order, a Conceptual Compliance Plan that contains the following:

(a) a list of the Con Edison departments responsible for the development and the implementation of the testing program;

(b) a description of all major tasks involved in the implementation of the testing program for each piping system or combination of interconnecting piping systems, including, but not limited to, piping retrofitting and actual tightness testing; and

(c) a schedule for implementing the tightness test for each section of piping within five (5) years of the effective date of this Order.

2. **Engineering Work Plans for Retrofitting the Underground Piping** - In the event that retrofitting is required for the tightness testing of an underground piping system, Con Edison shall, within the times specified in the approved Conceptual Compliance Plan, submit for the Department's review and approval, Engineering Work Plans for such work. In addition to engineering specifications, the Engineering Work Plans shall specify the procedures that will be used to prevent discharges of petroleum into the environment during retrofitting work.

3. **Tightness Test Reports** - Within thirty (30) days of the completion of tightness testing on any section of underground petroleum piping, Con Edison shall submit for Department review and approval a report describing the results of the testing and any necessary proposed corrective actions. The reports shall include copies of the original data sheets and test results. Such reports shall be submitted in accordance with the provisions of Appendix II [Submittal Review and Approval] of this Order for as long as there remains at least one Department environmental monitor. Thereafter, reports are to be submitted to the Region 2 Petroleum Bulk Storage Unit for Department review.

**E. Piping Tightness Testing Failure**

In the event that a section of underground petroleum piping fails a tightness test, Con Edison must notify the Department within two (2) hours of discovery of the failed test. Upon confirmation of a fuel oil leak, ConEd must initiate corrective actions, locate