

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Application to Renew State Pollutant
Discharge Elimination System Permit NY0250520 by

**Ruling on Issues and
Party Status**

THE VILLAGE OF KIRYAS JOEL,

DEC Application No.
3-3340-00078/00001

Applicant.

BACKGROUND

The Village of Kiryas Joel (Village or Applicant) owns the Kiryas Joel Wastewater Treatment Plant (KJWWTP) located in the Town of Monroe, Orange County, New York. The Village holds a State Pollutant Discharge Elimination System (SPDES) permit (NY Permit NY0250520) that authorizes the surface discharge of .97 million gallons per day (mgd) of treated sanitary wastewater from the plant to an unnamed tributary of the Ramapo River. Orange County, through the Orange County Sewer District No. 1 (OCSD), operates, manages and maintains the KJWWTP pursuant to a lease with the Village.

The KJWWTP receives and treats a portion of the domestic wastewater from the Village and all of the pretreated effluent from the Kiryas Joel Meat Market, Inc. and Kiryas Joel Poultry Processing Plant, Inc. (Petitioner or KJP). KJP discharges to the KJWWTP pursuant to a local permit issued by Orange County.¹ The balance of the Village's wastewater is sent to the OCSD Harriman Wastewater Treatment (HWWTP).

The Department initially issued SPDES Permit NY0250520 to the Village on July 1, 1994, with an expiration date of July 1, 1999 (DEC Exhibit D). The Village applied for a renewal of its SPDES permit in 1999, 2004, and 2009 (*id.*).² By letter dated August 9, 2013, the Department sent the Village a renewal application form and a request for information (RFI) (DEC Exhibits E, F).³ In the letter, Department staff indicated that as a result of the Village's score under the Environmental Benefit Permit Strategy (EBPS) Ranking System, a full technical review of the SPDES permit would be undertaken (*id.*).

¹ KJWWTP is considered one of the OCSD facilities and, therefore, its users are regulated under the County's Sewer Use Law.

² The permit term for SPDES permits is five years (*see* Environmental Conservation Law (ECL) § 17-0187[1]; 6 NYCRR 750-1.15).

³ The requested information was sought in response to the score and priority ranking the Village received under the Department's EBPS system (DEC Exhibits E, F). The EBPS establishes priorities for reviewing SPDES permit renewals based on the environmental benefit that will be gained by modifying the permit (ECL 17-0817; 6 NYCRR 750-1.19).

By its terms, SPDES Permit NY0250520 issued to the Village in 2009, expired on July 31, 2014 (Village Exhibit G). On January 21, 2015, the Village and the Department entered into an Order on Consent (2015 Consent Order), which enabled the Village to continue to operate the KJWWTP in accordance with the terms and conditions of the 2009 expired permit (DEC Exhibit G).⁴ On April 2, 2015, the Village submitted to the Department a signed and dated application with accompanying information and the requested data sampling (DEC Exhibit E). The Department processed the application for SPDES Permit NY0250520 as a new permit in accordance with the New York State Administrative Procedure Act (SAPA) and 6 NYCRR part 750 (Affidavit of Scott E. Sheeley (Sheeley Affidavit) ¶ 12).

After a technical review of the Village's application materials, Department staff prepared a draft permit and a SPDES fact sheet, dated March 30, 2018 (Sheeley Affidavit ¶ 10). Pursuant to the State Environmental Quality Review Act (SEQRA), the Department classified the permit with modifications as an unlisted action, completed a short environmental assessment form (Short EAF) dated April 6, 2018, and determined that there would be no significant adverse impact on the environment (Sheeley Affidavit ¶ 12). Accordingly, no environmental impact statement (EIS) was required (*id.*; ECL article 8; 6 NYCRR part 617).

A notice of complete application was published in the Department's electronic Environmental Notice Bulletin (ENB) on April 18, 2018, and in the *Times Herald Record* on April 30, 2018 (Sheeley Affidavit ¶ 12). The 30-day public comment period was extended twice at the request of the Village, and ended on October 31, 2018 (Sheeley Affidavit ¶ 12).⁵ Eight entities provided public comments on the draft permit, including the Village and Petitioner (Sheeley Affidavit ¶ 13). In accordance with 6 NYCRR 621.10(e), Department staff prepared a responsiveness summary to address all public comments (Sheeley Affidavit ¶ 16).

Effective November 7, 2018, the Village and the Department executed a second Order on Consent (2018 Consent Order) for the purpose of resolving, among other things, violations of the provisions of the 2015 Consent Order as it related to SPDES Permit NY0250520 (DEC Exhibit H).

Department staff issued a final SPDES permit with modifications to the Village on October 16, 2019 (Sheeley Affidavit ¶ 17). The Village objected to certain modifications of the final permit and by letter dated November 14, 2019, requested a hearing pursuant to 6 NYCRR 621.10(a)(2) (Village Exhibit S). The Division of Environmental Permits (DEP) referred the matter to the Office of Hearings and Mediation Services (OHMS) for permit hearing procedures pursuant to 6 NYCRR part 624 (Part 624), and the undersigned was assigned to the matter.

⁴ The 2015 Consent Order indicates that the Village filed an application for renewal of its SPDES permit on December 15, 2014 (*see* DEC Exhibit H at 2, ¶11). The Village indicated that the renewal application was complete in December 2013, but was not submitted as there were ongoing discussions with Department staff regarding modification of the SPDES permit effluent limits and in light of certain enforcement efforts by the EPA (*see* DEC Exhibit G at ¶¶ 11-12).

⁵The Department denied the Village's third request for an extension of the comment period (SPDES Permit Fact Sheet at 4-5).

LEGISLATIVE HEARING

In consultation with the Village and Department staff, a notice of public legislative hearing, issues conference, and deadline for petitions for party status (Notice) was drafted and published in the Department's ENB on February 19, 2020. The Village published the Notice in the *Times Herald-Record* on February 21, 2020.

The Notice advised that the legislative hearing portion of the permit hearing would be held at the Aishes Chayil Women Services Center, 7 Chevron Road, Monroe, New York, on March 30, 2020, at 4:00 p.m., and that written comments on the final permit would be accepted until April 3, 2020. Additionally, the Notice advised that the issues conference portion of the hearing would take place the following day, March 31, 2020, at the same location. Pursuant to the Notice, petitions for party status to participate in the issues conference and, if necessary, the adjudicatory hearing, were to be filed with OHMS on or before March 16, 2020.

As a result of the COVID-19 pandemic and Executive Order 202.15, the legislative hearing and issues conference scheduled for March 30 and 31, 2020 respectively, were cancelled, and the deadline for the submission of written comments was extended to April 10, 2020.⁶ Notice of the cancellation and extension of the public comment period was published in the ENB on March 25, 2020, and in the *Times Herald-Record* on March 31, 2020. No written comments were received.

As set forth in the Notice, all persons seeking full party status or amicus status were required to file a written petition with OHMS on or before March 16, 2020 (*see also* 6 NYCRR 624.5[b]). The Notice indicated that in the petition, the proponent must identify its environmental interest in the proceeding and the precise grounds for opposition or support of the permit.

One petition for full party status, dated March 13, 2020, was received from Petitioner KJP, a private company that produces kosher poultry products. Petitioner is a significant industrial user (SIU) that discharges on average, over 25,000 gallons of pre-treated industrial wastewater to the KJWWTP pursuant to a local permit issued by Orange County (Petition at 4-5; *see also* Village Exhibits J, O).⁷ Department staff do not object to Petitioner's request for party status (Department reply at 2).

ISSUES CONFERENCE

As previously stated, due to the COVID-19 pandemic and the various restrictions on public gatherings, the parties and Petitioner agreed to conduct the issues conference portion of the hearing by paper submissions. Each party and Petitioner were given an opportunity to submit a brief, as well as a reply, in support of their respective positions. Various requests, on consent, for extensions of time within which to submit papers were received. In light of the challenges

⁶ The due date for requests for full party status or amicus status remained unchanged.

⁷ A significant industrial user (SIU) is defined as an industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, contributes a process waste stream which makes up more than 5% of the design flow, or is designated as such by a control authority (40 CFR 403.3[v][1][ii]).

presented to the parties and Petitioner by the COVID-19 pandemic, all requests were granted. The following submissions were received:

- On behalf of KJP – Petition for full party status (Petition), dated March 13, 2020, with Affidavit of William Meinert, P.E., and a declaration from Edward McTiernan, attaching Petitioner Exhibits A-C.
- On behalf of the Village - Brief in Support of Objections and Challenges to SPDES Permit NY0250520 (Village brief), dated July 31, 2020, with Affidavit of Steven E. Adams, P.E., attaching Village Exhibits 0-13; Affirmation of Michael Sterthous, attaching Village Exhibits A-W.
- On behalf of the Department - Reply Brief (Department reply), dated November 6, 2020, with Affidavit of Carrie E. Smith, P.E., attaching DEC Exhibits A-GG; Affidavit of Scott E. Sheeley; Affidavit of Jason R. Fagel with an attached DEC Exhibit.
- On behalf of the Petitioner - Reply to Department Reply Brief (Petitioner reply), dated January 22, 2021.
- On behalf of the Village – Reply to Department Reply Brief (Village reply), dated January 25, 2021, with Affirmation of Michael Sterthous, attaching Village Exhibits A-B.
- On behalf of the Department - Sur-reply (Department sur-reply), dated February 23, 2021, with Affirmation of Carol Conyers, attaching DEC Exhibits HH, JJ.⁸

A detailed list of exhibits submitted by the parties and Petitioner is appended to this ruling.

Standard for Adjudication

Pursuant to 6 NYCRR 624.4(b)(2), the purpose of the issues conference portion of the permit hearing is to determine which parties will be afforded party status and to narrow the scope of issues that will be addressed at the adjudicatory hearing. During the issues conference, the ALJ determines whether there are disputed issues of fact in need of adjudication and whether there are legal issues, the resolution of which is not dependent on disputed facts (6 NYCRR 624.4[b][5]). In determining whether an adjudicable issue exists, the ALJ must consider the proposed issue in light of the application and related documents, the permit, the content of any petitions filed for party status and the record of the issues conference (6 NYCRR 624.4[c][2]).

The Village proposes multiple issues for adjudication and alleges that disputed factual issues are “inextricably intertwined” with disputed legal issues and, accordingly, the Village should be provided with an opportunity to proffer testimony and documentary evidence on all of its objections at a full adjudicatory hearing (Village brief at 2). The Village argues that SAPA and Department regulations require that if a SPDES permit is issued with significant conditions, the applicant has a right to a hearing on those conditions (*id.* at 15).

⁸ I note that there is no DEC Exhibit II.

In its reply, the Department argues that there is no absolute right to be fully heard on all objections to a permit (Department reply at 25). To require adjudication, there must be facts in dispute (*id.*). Department staff argues that the Village has failed to provide specific allegations of factual disputes (*id.*). According to the Department, since there are only disputed issues of law, a hearing on the permit conditions is not warranted and all legal issues can be resolved in this ruling (*id.*).

With regard to an applicant, an issue is adjudicable if it relates to a dispute between Department staff and applicant over a substantial term or condition of the draft permit (6 NYCRR 621.10[a][2]; *see also* 6 NYCRR 624.4(c) (1) (i)).⁹ In this matter, the Department has issued a final SPDES permit with conditions to the Village and the Village is objecting to certain of those conditions. Accordingly, any objection to a significant permit condition which is based on a factual dispute between Department staff and the Village, will advance to adjudication (6 NYCRR 624.4[b][2][iii], [iv]; *see also* DEC Office of Hearings Comments/Response Document on Part 622 and Part 624, Dec. 1993, at 17). Any objection that relates to a legal issue whose resolution is not dependent on factual disputes, will be resolved in this ruling.

DISCUSSION

The Village's Issues for Adjudication

1. Stream Classification

In its papers, the Village argues that since the stream that the KJWWTP discharges into is intermittent and cannot support fish propagation, it has been incorrectly classified by the Department as a Class C stream (Village reply at 3). The Village maintains that the appropriate designation for the stream at issue is Class D, which was its designation prior to the 1994 reclassification by the Department (*id.* at 4). According to the Village, since a stream's classification is used to determine water quality based effluent limits (WQBELs) in a SPDES permit, and the stream in this matter was incorrectly classified as Class C, the Department's application of the reasonable potential analysis (RPA) and its imposition of WQBELs based on this Class C status are in error (*id.* at 5).

In its reply, Department staff indicates that the stream in question has been classified as a Class C waterbody since 1994 and that the effluent limits in expired SPDES Permit NY0250520 were reflective of the stream's status as a Class C waterbody (Smith Affidavit ¶¶ 25-33). Regardless, Department staff argues that a regulatory challenge to a stream classification, or in the alternative a petition for reclassification of a stream, is misplaced in a Part 624 permit hearing proceeding (Department reply at 26).

The KJWWTP discharges to a segment of an unnamed tributary of the Ramapo River which is classified and regulated as a Class C waterbody (Fagel Affidavit ¶4; *see also* 6 NYCRR 860.4-95). The regulation designating this segment as Class C was promulgated via a

⁹ The standard for adjudicability contained in 6 NYCRR 624.4(c)(1)(i) applies to applicants challenging both draft and final permits.

rulemaking in 1994 and was subject at that time to the notice and public comment provisions required under SAPA (Fagel Affidavit ¶ 5). A challenge now to the 1994 reclassification of this segment is untimely.

Nevertheless, at any time, a person may petition the Department to reclassify a waterbody (*see* 6 NYCRR 609.2). The Department shall examine the facts and circumstances set forth in the petition, and may in its discretion, initiate a rule making to reclassify the water (6 NYCRR 609.6). If the Village believes that this segment has been misclassified, it may submit a reclassification petition, with accompanying documentation, to the Department for their consideration.¹⁰

A Part 624 permit hearing proceeding is not the appropriate forum for either a challenge to, or a reclassification request regarding a waterbody.¹¹

2. Permit Renewal

In its brief, the Village argues that since there has been no material change in conditions or relevant law since the last renewal of SPDES Permit NY0250520 in 2009, the Village is entitled to a “no-change” permit renewal (Village brief at 34-35). According to the Village, the KJWWTP was designed to, and has, discharged to a Class D stream for the past 30 years (*id.* at 36). The Village argues that staff’s failure to modify the permit conditions to address Class C water quality standards in previous renewals, now bars the Department from doing so (*id.*).

In response, the Department maintains that the Village was not entitled to an administrative renewal of the 2009 permit because it failed to submit a timely renewal application (Smith Affidavit ¶¶ 18, 23). Regardless, according to Department staff, even if the Village had submitted a timely application, it would only be entitled to an administrative renewal if after a technical review, it was determined that conditions had not changed. According to Department staff, that was not the case here (*id.*).¹² Finally, the Department argues that the effluent limits in SPDES Permit NY0250520 have always been reflective of a Class C waterbody (Smith Affidavit ¶¶ 25-29; DEC Exhibits M, N).

Pursuant to SAPA § 401(2), when a licensee has made timely and sufficient application for the renewal of a license for an activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency. By its terms, SPDES Permit NY0250520 expired on July 31, 2014. Accordingly, a signed and dated application should have been submitted to the Department in advance of that date. The issues conference record indicates that it was not.

¹⁰ To the extent that the Village is seeking to challenge in this proceeding the alleged failure of the Department to provide information requested by the Village pursuant to the Freedom of Information Law (FOIL), I refer the Village to the appeal provisions in Public Officers Law § 89(4)(a).

¹¹ The Village also argues that since the Department failed to update the water quality classification of the receiving water in prior (1999, 2004, 2009) renewals for SPDES Permit NY0250520, they in effect “acquiesced” to characterization of the stream as Class D and are “barred” from regulating the segment as a Class C waterbody (Village brief at 3). I note that the Village fails to cite any relevant legal authority in support of its position.

¹² The issues conference record indicates that KJP began discharging its process wastewater beginning in 2004 (DEC Exhibit S, T).

For the purposes of its SPDES permit renewal review, the Department requested information from the Village as early as August 2013 (DEC Exhibit E). According to the request, the Department determined that based upon EBPS considerations, a modification to the SPDES permit might be necessary (*id.*). By letter dated September 2013, the Department sent the Village the standard five-year notice and renewal application and indicated that a separate permit modification application was required (DEC Exhibit F). However, a signed and dated application was not received from the Village until April 2, 2015, well after SPDES Permit NY0250520 expired (DEC Exhibit E). Pursuant to the 2015 Order on Consent, the Village was operating the KJWWTP in accordance with the terms of the expired permit until a new permit was obtained (DEC Exhibit G).

Even if the Village had filed a timely SPDES renewal application, it would only be entitled to a no-change renewal of the permit if the technical review by Department staff indicated that no new conditions were warranted, which is not the case here. When the initial SPDES permit was issued to the Village in 1994, it was not receiving industrial effluent from KJP (DEC Exhibits O, S). In fact, the Village did not begin receiving wastewater from KJP until sometime after 2003 when KJP was established (*id.*). Moreover, the Village's rank as a result of the EPBS SPDES permit renewal procedure indicates that there was potentially a need for a modification of the permit (DEC Exhibit E).

Accordingly, the Village has established no legal basis for the issuance of a "no-change" permit renewal in this proceeding.

3. *Mini Pretreatment Program*

In its brief, the Village argues that neither the ECL nor the Clean Water Act (CWA) provide the Department with legal authority to impose an industrial pretreatment program in the Village's SPDES permit (Village brief at 26). This authority, they maintain, is reserved exclusively to the United States Environmental Protection Agency (EPA) (*id.*). Moreover, the Village asserts that although the EPA has authorized the Department to administer some aspects of the National Pollutant Discharge Elimination System (NPDES) program, a pretreatment program is not included (*id.* at 29). According to the Village, because the Department has not been authorized by the EPA to administer such a program, inclusion of a mini pretreatment program in the Village's SPDES permit is in error (*id.* at 30). Finally, the Village maintains that since the EPA has exercised its jurisdiction over Petitioners' effluent in a consent decree, the Department lacks authority to regulate the pretreatment of the Petitioners' effluent (*id.* at 32).¹³

In its reply, Department staff indicate that while they are not a federally delegated pretreatment authority, applicable State law and regulations authorize the inclusion of a mini

¹³ In 2015 KJP and EPA entered into a consent decree which, among other things, addressed violations of federal pretreatment regulations (Village Exhibit R). The Village cites to the consent decree in support of its position that the authority to regulate the pretreatment of effluent is possessed exclusively by the federal government (Village brief at 32; Village Exhibit R). According to the consent decree, KJP violated general pretreatment provisions, as opposed to a federally approved pretreatment program (Village Exhibit R).

pretreatment program in a SPDES permit for publicly owned treatment works (POTW) (*see* ECL article 17; 6 NYCRR part 750; *see also* TOGS 1.3.3). Moreover, the Department's role with regard to pretreatment programs is outlined in the 1984 and 1992 memoranda of understandings (MOUs) with the EPA which detail the respective roles of the two agencies with regard to pretreatment programs (*see* DEC Exhibit Q). According to the Department, when appropriate, POTWs are required to develop and implement a mini pretreatment program for the purpose of protecting the POTW from the discharge of pollutants that cause a violation of the POTWs permit (Department reply at 23).

The national pretreatment program was established for the purpose of insuring that industries that discharge wastewater to POTWs do so in a manner that controls pollutant levels, with the goal being to prevent the pass through of toxics to receiving waters (*see* CWA § 307). To further these objectives, municipalities are required to develop and implement approved pretreatment programs.¹⁴ In addition, industries discharging to these municipal systems, must pretreat and control their discharges. EPA and DEC have shared responsibilities in this effort (Exhibit Q). As is relevant here, with regard to POTWs that do not have an approved pretreatment program, and SIU's that are not subject to national categorical pretreatment standards, the Department has lead responsibility for compliance monitoring and enforcement, and the authority to require a POTW, through its SPDES permit, to develop and implement a "mini" pretreatment program (TOGS 1.3.3). As part of this pretreatment program, the POTW must identify SIUs, determine whether local sewer use laws are appropriate, require and issue industrial user permits, and implement the pretreatment program. At the Department's request, EPA will provide technical assistance.

A review of the relevant legal authority here reveals that the Department has the authority to require a mini pretreatment program, and further, that the one at issue in this matter is properly implemented through SPDES Permit NY0250520 (*see* ECL article 17; 6 NYCRR part 750; DEC Exhibits P, Q). The issues conference record indicates that the Village does not have an approved pretreatment program (*see* DEC Exhibits HH, JJ). Furthermore, KJP is a significant industrial user that is not subject to categorical pretreatment standards (Smith Affidavit ¶ 98).

Accordingly, the Department has the authority to include a mini pretreatment program in the permit and the Village has identified no error of law or abuse of discretion in the Department's determination to require such a program.

4. *Pollutant Specific Discharge Limits and Monitoring Requirements*

In its brief, the Village challenges the discharge limits for ammonia (N), total dissolved solids (TDS), bis (2 ethylhexyl) phthalate, nitrite, copper, cyanide, phenolics (total unchlorinated), dissolved oxygen, total phosphorus, and testing for whole effluent toxicity (WET) (Village brief at 37). Additionally, the Village objects to the imposition of new monitoring requirements for ultimate oxygen demand (UOD), total Kjeldahl nitrogen (TKN),

¹⁴ Relevant here, an "approved pretreatment program" is a program administered by a POTW that meets the criteria established pursuant to 40 CFR 403.8 and 403.9 and which has been approved by an EPA Regional Administrator. The Village does not have an approved pretreatment program.

chloride, sodium, bis (2 ethylhexyl) phthalate, nitrite, cyanide and phenolics. According to the Village, “while these challenges are intertwined to an extent with some of the legal issues, including the stream classification and RPA, there are also substantial disputes of fact regarding the limits themselves that warrant a testimonial hearing on the merits of these issues” (Village reply at 10).

Department staff states that they considered all available data and performed a RPA for each pollutant detected in samples of the POTWs effluent (Smith Affidavit ¶ 31).¹⁵ According to Department staff, after a review of the data, a WQBEL was established for those pollutants that had the potential to cause or contribute to a water quality violation (Smith Affidavit ¶ 33).

Ammonia (N)

In the permit, a new WQBEL for ammonia is required (Permit Fact Sheet at 16). In calculating this requirement, Department staff determined that because the receiving waterbody is intermittent and has no assimilative capacity, “PH level effluent data” was used and the effluent limit is set at the water quality standard (*id.*). In calculating the WQBEL for ammonia, Department staff relied on the discharge monitoring reports (DMRs) submitted by the Village (*id.*).

The Village objects to the effluent limit set for ammonia and argues that the PH data used by the Department should be representative of the watershed and not the effluent (*see* Adams Affidavit ¶¶ 29-35; TOGS 1.3.1[E]). In addition, the Village argues that the PH data provided on the DMR is suspect and should not be considered reliable for permit writing purposes (*id.*).

Total Dissolved Solids (TDS)

In the permit, a new WQBEL for TDS of 500 mg/l is required (Permit Fact Sheet at 20; Smith Affidavit ¶¶ 48-51). In setting this limit, Department staff relied upon samples collected by the EPA in July 2014, the KJWWTP in March 2016, and Orange County Department of Public Works between September 2015 and June 2017 (*id.*).

The Village objects to this new requirement, arguing that since TDS is a “ubiquitous pollutant,” any such limit is not practically achievable with the Village’s domestic sanitary wastewater and a variance is necessary (Adams Affidavit ¶ 36).¹⁶ Moreover, the Village argues

¹⁵The data considered by the Department included the following: the Village’s discharge monitoring reports (DMRs) (October 31, 2014 - October 31, 2017); the Village’s NY-2A application (April 2, 2015); the EPA’s National Pollutant Discharge Elimination (NPDE) compliance sampling inspection of the Village’s WWTP (July 22-23, 2014); the Headworks Loading Analysis Report (Revised May 8, 2017) submitted by LaBerge Group on behalf of the Village; and sampling results submitted by the Orange County Department of Public Works (OCDPW) (September 2015 and June 2017) (Smith Affidavit ¶ 32; Permit Fact Sheet at 9, 14-23).

¹⁶ Pursuant to 6 NYCRR 702.17(d), the Village may apply for a variance by submitting a written application to the Department.

that some of the data relied upon by Department staff in calculating the WQBEL for TDS was not available at the time of the permit.¹⁷

Bis (2 Ethylhexyl) Phthalate

SPDES Permit NY0250520 requires a new WQBEL for bis (2 ethylhexyl) phthalate (Permit Fact Sheet at 22; Smith Affidavit ¶¶ 52-55). In calculating this WQBEL Department staff relied on the 2017 Headworks Loading Analysis submitted by Laberge Group on behalf of the Village (*id.*). Since bis (2 ethylhexyl) phthalate detections may be a result of sample contamination during collection or analysis, the Department determined that short-term, high-intensity monitoring is required so that a determination can be made as to whether limits are necessary to protect the receiving waterbody (*id.*).

The Village objects to this permit requirement on the ground that short-term high intensity monitoring for three months for later review is unreasonable and unnecessarily conservative (Adams Affidavit ¶ 37). Since establishing a WQBEL for this pollutant is unreasonable, there should be no monitoring requirement (*id.* at ¶ 54[e]).

Nitrite

In the permit, Department staff included a new WQBEL for nitrite (Permit Fact Sheet at 19; Smith Affidavit ¶ 56-61). In calculating this WQBEL, Department staff used existing effluent quality from the sampling performed for the 2017 Headworks Loading Analysis submitted by Laberge Group on behalf of the Village (*id.*). The permit limit for nitrites comes from TOGS 1.1.1 and is applicable to waters that are suitable for fish propagation (*id.*). Since the receiving waterbody is Class C, the Class C water quality standards are applicable (*id.*).

According to the Village, since nitrite is produced at the plant during the nitrification process, small amounts are expected to remain in the effluent (Adams Affidavit ¶ 38). Also, the nitrite limit set in the permit is for a Class C waterbody and a question exists whether this segment is suitable for fish (*id.*). Since there is no need to limit this pollutant, it does not need to be regularly sampled (*id.* ¶ 54[f]).

Copper

In the permit, a new WQBEL for copper was established (Permit Fact Sheet at 19; Smith Affidavit ¶ 62-64). The limit for copper is based upon classification of the receiving waterbody as a Class C. (*id.*)

¹⁷ As previously indicated, the data relied upon by the Department for the TDS discharge limit is from sampling collected by EPA in 2014, KJWWTP in 2016 and Orange County from 2015 to 2017 (SPDES Permit Fact Sheet at 20). While the Smith Affidavit references a report dated July 1, 2019, it does not indicate that Department staff relied upon the data in that report in setting the TDS limit (Smith Affidavit ¶ 21).

The Village objects to this limit on the grounds that it is overly conservative and based on an inappropriate stream classification and aquatic life protection criteria (Adams Affidavit ¶ 39).

Cyanide

Department staff included a new requirement with regard to cyanide in SPDES Permit NY0250520 (Permit Fact Sheet at 21; Smith Affidavit ¶¶ 65-70). The WQBEL was developed consistent with TOGS 1.3.3(E) (*id.*). In calculating this WQBEL, Department staff relied upon three data samples, two of which were non-detects (*id.*). Due to the cyanide concentration reported, and the absence of dilution provided by the receiving water body, the discharge has reasonable potential to exceed the Class C water quality standard and a WQBEL is necessary (*id.*).

The Village objects to the total cyanide limit set in the permit. According to the Village, the limit set by the Department is overly conservative (Adams Affidavit ¶¶ 40-42). Only three samples were taken and since two were non-detects, more data is necessary (*id.*). Also, the Village contends that cyanide in effluent is most likely related to high salt content and thus the Village's compliance with reasonable TDS limits will reduce cyanide discharges (*id.*). Since establishing a WQBEL for this pollutant is unreasonable, there should be no monitoring requirement (*id.* at ¶ 54[g]).

Phenolics (Total Unchlorinated)

In the permit, a new WQBEL for phenolics is required (Permit Fact Sheet at 21-22; Smith Affidavit ¶¶ 71-75). To determine existing effluent quality, Department staff utilized sampling performed for the Headworks Loading Analysis in 2017 (*id.*). Consistent with EPA's Technical Support Document for Water Quality Based Toxics Control, Department staff used a multiplier of three to calculate projected instream concentration (*id.*).

The Village argues that the multiplier used by Department staff is unreasonable and overly conservative (Adams Affidavit ¶¶ 43-46). Since establishing a WQBEL for this pollutant is unreasonable, the Village contends that there should be no monitoring requirement (*id.* ¶ 54[g]).

Dissolved Oxygen

In the permit, a new WQBEL for oxygen is required (Permit Fact Sheet at 15; Smith Affidavit ¶¶ 76-78). In developing this WQBEL, Department staff reviewed sampling performed by the Village in 2013 for their SPDES permit renewal application (*id.*).

According to the Village, the dissolved oxygen data which they provided, is from 2013 and not representative of the discharge (Adams Affidavit ¶¶ 47-48).

Total Phosphorus

SPDES Permit NY0250520 contains a new mass-based limit for total phosphorous (Permit Fact Sheet at 17; Smith Affidavit ¶¶ 79-81). These limits were developed in accordance with 6 NYCRR 750-1.25(c) and 40 CFR 122.45, and included to ensure continual compliance with the WQS at direct WWTP discharge volumes (*id.*).

The Village objects to this new requirement on the grounds that a new mass-based limit for reporting is unnecessary (Adams Affidavit ¶ 49).

Whole Effluent Toxicity (WET) Testing

In the permit, WET testing is required (Permit Fact Sheet at 28-29, Smith Affidavit ¶¶ 82-84). This permit requirement was developed in accordance with TOGS 1.3.2, which indicates that WET testing may be required in a SPDES permit whenever a discharge has the potential for toxicity (*id.*).

The Village objects to the testing requirement for whole effluent toxicity in the permit on the grounds that it should be obtained before establishing final permit requirements for WET (Adams Affidavit ¶¶ 50-52).

Ultimate Oxygen Demand (UOD)

Ultimate oxygen demand is a measure of the total oxygen consumption due to organic and inorganic pollutants (Permit Fact Sheet at 18; Smith Affidavit ¶¶ 85-87). The Department included a new monitoring requirement for this pollutant in the permit in order to determine the sufficiency of carbonaceous and nitrogenous oxygen-demanding pollutant limits (*id.*).

The Village objects to a new and additional weekly reporting requirement for UOD tied to a calculation and weekly TKN sampling (Adams Affidavit ¶ 54[a]). UOD is simply calculated from CBOD and TKN sample data. Water quality standards do not require a discharge limit for this parameter and the regular sampling and reporting proposed provides no benefit to the Village in terms of showing compliance with discharge limits (*id.*).

Total Kjeldahl Nitrogen (TKN)

Total Kjeldahl nitrogen is used to calculate UOD (Permit Fact Sheet at 18; Smith Affidavit at ¶¶ 85-87). The Department included a new monitoring requirement for this pollutant in the permit in order to determine the sufficiency of carbonaceous and nitrogenous oxygen-demanding pollutant limits (*id.*).

According to the Village, weekly TKN sampling and reporting is unreasonably demanding and unnecessary for the Village's highly treated effluent and provides no added benefit to the Village or the environment (Adams Affidavit ¶ 54[b]). The added cost and effort invoked is therefore seen as an unnecessary burden on Village resources (*id.*).

Chloride

In the permit, the monitoring of chlorides is required so that the Department may determine the sufficiency of TDS limitations and ensure that the downstream Class A (T) segment is adequately protected (Permit Fact Sheet at 21; Smith Affidavit ¶¶ 85-87). Chlorides are a constituent of TDS (*id.*).

The Village objects to the weekly composite sampling and reporting of monthly averages for this pollutant (Adams Affidavit ¶ 54[c]). Given the fact that standards do not require a discharge limit for this pollutant, regular sampling and reporting provides no benefit to the Village in terms of showing compliance with discharge limits or the environment (*id.*). The added cost and effort invoked is therefore seen as an unnecessary burden on Village resources (*id.*).

Sodium

According to Department staff, the monitoring of sodium (which is a constituent of TDS) is required so that a determination can be made regarding the sufficiency of TDS limitations (Permit Fact Sheet at 21; Smith Affidavit ¶¶ 85-87).

The Village objects to the weekly composite sampling and reporting of monthly averages for this pollutant (Adams Affidavit ¶ 54[d]). Given the fact that standards do not require a discharge limit for this pollutant, the regular sampling and reporting proposed provides no benefit to the Village in terms of showing compliance with discharge limits or the environment (*id.*).

While the Village alleges a factual dispute with regard to the some of the data relied upon by the Department in formulating the various pollutant discharge limits, it has failed to provide any alternative data. In fact, some of the data relied upon by Department staff in calculating the above-referenced limits was provided to the Department by the Village. Moreover, applicant's arguments largely relate to the methods used by the Department to derive the specific limits, not to facts that require adjudication. Vague and conclusory statements that don't relate to a disputed fact are insufficient to advance an objection to adjudication. Finally, I note that nothing in the issues record supports the Village's assertion that the limits set by Department staff are affected by an error of law or unreasonable.

Accordingly, none of the Village's objections regarding pollutant specific discharge limits and effluent requirements in the permit will advance to adjudication and are rejected on the law.

5. SEQRA

In its brief, the Village argues that the Department failed to comply with the substantive and procedural mandates of SEQRA such that the permit determination should be annulled (*see* Village brief at 21). According to the Village, although the Department prepared a Short EAF

for the permit, the Department did not provide support for the negative declaration and failed to take the requisite hard look at potential adverse environmental impacts and reasonable alternatives (*id.*). Moreover, the Village maintains that the Department failed to assess the cumulative impacts of the permit relating to community character, social and economic impacts, as well as growth and development (*id.* at 22).

Specifically, the Village identifies the following adverse environmental impacts resulting from the new permit: KJWWTP will be required to install, among other things, reverse osmosis to meet the new effluent standards – this will have resulting cost and energy implications; the poultry processing plant, one of the largest employers and source of tax revenues for the Village, will be forced to shut down; wastewater from the poultry plant will be redirected to the HWWTP operated by OCSO resulting in overtaxing that system; KJWWTP may be forced to shut down due to its inability to comply with the permit conditions and compliance schedule (Village brief at 21-22).

As part of an issues conference, the ALJ may review the determination of staff to forego the preparation of an EIS (*see* 6 NYCRR 624.4([6][i][a])). If the ALJ finds that the determination of Department staff was irrational or otherwise affected by an error of law, the determination shall be remanded to staff for a redetermination. Otherwise, the determination will stand (*id.*).

Department staff prepared a draft SPDES permit for the KJWWTP along with a SPDES fact sheet, dated March 13, 2018 (Affidavit of Scott E. Sheeley, sworn to November 5, 2020 [Sheeley Affidavit]). The draft permit was publicly noticed in the ENB as well as the *Times Herald-Record* (Sheeley Affidavit ¶ 10). Department staff classified the modification of the Village's SPDES permit as an unlisted action under SEQRA and completed a Short EAF (*see* Short EAF dated April 6, 2018; Sheeley Affidavit ¶¶ 11, 19, 20). The Short EAF references the draft SPDES permit and describes the permit modifications including new effluent limits, whole effluent toxicity testing, additional limits for total phosphorus, new monitoring requirements, a new priority mercury minimization program, new mini pretreatment program and a schedule of compliance, and notes there were no changes to the proposed maximum flow of .97 million gallons per day (*see* Draft SPDES Permit; Sheeley Affidavit ¶ 20-21). Department staff then evaluated the proposed changes in the permit against the significance criteria set forth in 6 NYCRR 617.7(c) and concluded that there would be no significant impact to the environment (*id.* ¶ 22).

Since the maximum design flow of 0.97 mgd remained unchanged and the modifications to the permit would result in improvements to water quality, it was reasonable for staff to determine that the imposition of new permit conditions would not have an adverse impact on the environment, community character or existing patterns of population distribution or growth.¹⁸ Furthermore, although economic impacts must be considered under SEQRA, adverse economic impacts that are unrelated to environmental concerns are not within its purview (*see Matter of Hyland Facility Assoc.*, Interim Decision of the Commissioner, Aug. 20, 1992, at 4). The adverse impacts cited by the Village in their brief are solely economic and speculative in nature.

¹⁸ The regulations at 6 NYCRR 617.2(i) define “environment” as the physical conditions that will be affected by a proposed action, including existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.

I find that the Department's SEQRA determination was rational and not affected by an error of law.

6. *Schedule of Compliance*

The Village maintains that the schedule of compliance set forth by the Department in SPDES permit NY0250520 is arbitrary, capricious and irrational (Village brief at 33-34). More specifically, the Village argues that the short timeframes for compliance imposed by the Department are impractical and in contrast to the schedule of compliance contained in the OCSD SPDES permit, unduly short (*id.*; *see also* Adams Affidavit ¶ 71).

In their reply, Department staff argue that a schedule of compliance is designed to achieve compliance with applicable water quality standards in the shortest reasonable time and WQBELs are to be achieved as soon as possible (*see* 6 NYCRR 750-1.14[a]). Furthermore, according to the Department, the Village failed to propose any alternate compliance dates (Smith Affidavit ¶¶ 36, 40). Nevertheless, as part of this issues conference, Department staff recognize and agree that some adjustments to the compliance schedule are necessary (Smith Affidavit ¶¶ 37, 38).

I note that some of the dates in the schedule of compliance have passed during the pendency of this issues conference. Moreover, the parties are in agreement that some adjustments to the compliance schedule are in order. Finally, I find that the Village has raised an issue with regard to whether compliance with the timeframes contained in the permit is reasonable.

Accordingly, I find that the Village's objections with regard to the schedule of compliance in SPDES Permit NY0250520 will advance to adjudication.

8. *Economic Considerations*

In its brief, the Village argues that the CWA mandates the consideration of the economic impact of effluent limitations (Village brief at 39). According to the Village, a key component of this analysis is the consideration of widespread economic and social impacts when applying water quality standards to SPDES permits (*id.*). Moreover, the Villages contends that CWA § 302(b) mandates consideration of the economic impact of effluent limitations (*id.*). The Village maintains that the KJWWTP was designed and constructed in 1994 to treat wastewater to meet effluent standards for a Class D stream and that KJWWTP will be unable to comply with the permit absent significant plant modifications and capital expense (*id.* at 40-41).

The effluent limits at issue in SPDES Permit NY0250520 are WQBELs. It is well settled that WQBELs are set without regard to cost or technology availability (*see Natural Resources Defense Council, Inc. v United States Env'tl. Protection Agency*, 859 F2d 156, 208 (DC Cir 1988); *see also Matter of Orange County Dept. of Public Works (Orange County)*, Decision of the Commissioner, January 29, 2020). Moreover, the cost considerations established under CWA § 302(b) are not applicable to determinations made by the Department (*see Orange County*

at 3-4). Accordingly, cost is not a factor.¹⁹ If flexibility is needed, the Village may pursue a variance to provide more time for compliance with the new effluent limits (*see* 6 NYCRR 702.17).

Petitioner's Proposed Issues for Adjudication

As previously stated, one petition for full party status was received from Petitioner KJP, a private company that produces kosher poultry products.²⁰ Petitioner is a SIU of the KJWWTP and discharges pre-treated industrial wastewater to the KJWWTP in accordance with a local permit issued by OCSD (*see* Village Exhibit J).

Pursuant to 6 NYCRR 624.5(d)(1), the determination whether to grant a petitioner full party status is based upon a finding that the petitioner has: filed an acceptable petition; raised a substantive and significant issue or, can make a meaningful contribution to the record regarding a substantive and significant issue raised by another party; and demonstrated an adequate environmental interest.²¹

Petitioner KJP states that its environmental interest in this matter stems from its status as a noncategorical SIU of the KJWWTP that, as a result of SPDES Permit NY0250520, will now be subject to a pretreatment program (Petition at 4-7). Petitioner alleges that as a regulated entity, it has an interest in how the Department interprets and administers the various statutory and regulatory provisions relating to wastewater regulation (*id.* at 7-8). Finally, Petitioner indicates that it will make a meaningful contribution to a substantive and significant issue raised by the Village, specifically, “the numerous infirmities in the Permit, including the flaws in the various compliance schedules” (*id.* at 22).

Petitioner opposes the requirement in SPDES Permit NY0250520 that the Village develop a mini industrial pretreatment program (Petition at 8). According to Petitioner, since it is the only SIU of the KJWWTP, the “determination that the Village must develop a Mini Industrial Pretreatment program targets KJP specifically” (*id.* at 5). Petitioner’s objections to the mini pretreatment program are based upon the following disputed issues: the schedule of compliance for the pre-treatment program failed to consider specific facts involving the Village or KJP and is therefore arbitrary; the TDS effluent limits are unreasonable because they fail to account for background conditions; and, the Department lacks authority to require a mini pretreatment program in the Village’s SPDES permit (*id.*).²²

¹⁹ I note that Department staff do not require that a specific technology treatment be installed to meet a permit limit (Smith Affidavit ¶ 130).

²⁰ The koshering process operates under strict Rabbinical supervision (Petition at 2). Large quantities of salt are utilized in the koshering process, accordingly the wastewater generated contains total dissolved solids (TDS) and chlorides (*id.*).

²¹ An issue is substantive "if there is sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry." (6 NYCRR 624.4[c][2]). An issue is significant "if it has the potential to result in the denial of a permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the draft permit." (6 NYCRR 624.4[c][3]).

²² Petitioner’s specific legal arguments with regard to the mini pretreatment program are as follows: the permit subjects KJP to two local control authorities; and, EPA, not the Department, is the “approval authority” for pretreatment programs for SIU’s (Petition at 16-22). I note that while the Petitioner frames the legal issues

Upon review of the criteria in 6 NYCRR 624.5(d)(1) and the petition for full party status, I find that KJP has filed an acceptable petition, has an environmental interest in this matter, and can make a meaningful contribution on a substantive and significant issue raised by the Village, namely the various schedules of compliance in SPDES Permit NY0250520.

Mini-Pretreatment Program

- *Schedule of Compliance*

In its Petition, KJP alleges that the schedule set forth for the mini pretreatment program in the Village's permit is arbitrary (Petition at 9). According to Petitioner, pretreatment limits are applied to industrial wastewater to address specific needs of a POTW or receiving water body and here, Department staff simply "lifted the pretreatment Mini Schedule" out of Appendix C of TOGS 1.3.3, and placed it into the Village's permit without any regard to site specific conditions or Petitioner's limitations as a producer of kosher poultry products (*id.* at 12).

Moreover, Petitioner argues that the compliance date of November 1, 2021, is impossible to meet and two deadlines in the permit have since passed.²³ Finally, Petitioner argues that the pretreatment provisions in Orange County's draft permit and the pretreatment mini schedule in SPDES Permit NY0250520 are designed to address the same problem (the levels of TDS discharged by KJP), yet the compliance schedules are disparate (Petition at 11).

As discussed in subsection section 6, Department staff recognize and have agreed to some modifications of the compliance schedule in this matter, and the Village has raised adjudicable issues regarding the remainder of the schedules. Petitioner has demonstrated that it can make a meaningful contribution with respect to this issue which has been advanced to adjudication.

- *TDS Limits*

With regard to the TDS levels established in SPDES Permit NY0250520, Petitioner alleges that the Department ignored TOGS 1.3.3 when it established a WQBEL for TDS without adequate background sampling (Petition at 14-16). According to Petitioner, data contained in the Village's 2017 headworks analysis demonstrates that there may be upstream non-industrial sources contributing TDS to the receiving waters for the Village (*id.* at 15). Petitioner notes that

surrounding the Department's pretreatment authority differently than the Village, the crux of the issue is the same: whether the Department can require a mini pretreatment program in a SPDES permit for a POTW. A discussion of this authority can be found in subsection 3 above.

²³ Within one month of the effective date of the permit the Village was supposed to submit an industrial chemical survey form and within two months of submission of the industrial survey, the Village was required to submit documentation regarding the procedures for attaining compliance with the new TDS limit (SPDES Permit NY0250520 at 8). In further support of its claim that the compliance schedule in the Village's permit is unreasonable, Petitioner cites to the detailed requirements that must be included in the engineer report for wastewater infrastructure projects in New York State (Petition at 13; Petitioner Exhibits B, C).

the Village's data was insufficient to quantify that contribution and that further investigation should have been conducted (*id.* at 16; Affidavit of William Meinert (Meinert Affidavit) at ¶¶ 20-23). Petitioner's position is that a baseline for TDS should have been investigated before the Department established a WQBEL for this pollutant (Petition at 14).

In its reply, Department staff alleges that the background sampling program in TOGS 1.3.3 was considered, but determined to be unnecessary to the derivation of WQBEL for TDS because KJWWTP discharges from a single outfall to an intermittent stream with no assimilative capacity (Smith Affidavit ¶ 11). In establishing the effluent limit for TDS, Department staff performed an RPA utilizing data provided by EPA, the Village and Orange County Department of Public Works. (Smith Affidavit ¶ 8). Since the receiving water body of the KJWWTP is intermittent with no assimilative capacity, the WQBEL for TDS was set at the water quality standard (TOGS 1.3.3; Smith Affidavit ¶¶ 3, 10). Moreover, sampling performed by the Village and KJP indicated that Petitioner was responsible for more than 90% of the TDS and chlorides in the receiving water body (*id.* ¶¶ 107-111).

Petitioner has failed to provide legal support for the assertion that background conditions must be considered in establishing a WQBEL for TDS. Nor has Petitioner provided competing or additional sampling data. Thus, although Petitioner alleges that there may be upstream sources of TDS, they have failed to identify any other SIU.

Accordingly, Petitioner has failed to raise a substantive and significant issue with regard to the establishment of the TDS effluent limit in SPDES Permit NY0250520.

RULINGS

The Village has raised an issue with regard to whether compliance with the timeframes contained in SPDES Permit NY0250520 is reasonable. Accordingly, the Village's objections with regard to the various schedules of compliance in the permit will advance to adjudication.

Petitioner KJP has demonstrated that it can make a meaningful contribution regarding an issue raised by the Village, specifically the reasonableness of the compliance schedules in SPDES Permit NY0250520, and therefore, is granted full party status.

APPEALS

A ruling to include or exclude any issue for adjudication, or on the merits of any legal issue that is made as part of an issues ruling, may be appealed to the Commissioner on an expedited basis (6 NYCRR 624.8[d][2][i], [ii]). Any appeals from this ruling are to be filed with the Commissioner in writing on or before 4:00 p.m. on Friday, June 4, 2021, and replies are to be filed on or before 4:00 p.m. on Friday, June 18, 2021 (*see* 6 NYCRR 624.6[g]; 624.8[b][1][xv]). Appeals and replies should include citations to the briefs and replies submitted by the parties and Petitioner.

An original and two copies of any appeal or reply must be filed with Commissioner Basil Seggos (Attention: Louis A. Alexander, Deputy Commissioner for Hearings and Mediation Services) at the New York State Department of Environmental Conservation, 625 Broadway, 14th Floor, Albany, New York 12233-1010. In addition, one copy of each filing must be sent to the other parties at the same time and in the same manner as they are filed with the Commissioner. Appeals and replies may be served by email provided that conforming hard copies are sent by regular mail and post marked by the applicable due date. Service by facsimile transmission is not permitted and will not be accepted.

/s/

Michele M. Stefanucci
Administrative Law Judge

Dated: Albany, New York
May 14, 2021

Exhibit List - Village of Kiryas Joel

Exhibit	Description
A	AKRF, Inc. Growth Study for Village of Kiryas Joel Amended FEIS for the proposed connection to the New York City Catskill Aqueduct
B	Decision of the Appellate Division, Third Department in Matter of Village of Woodbury et al. v. Seggos et al., Appellate Division Docket No.: 524669 (October 26, 2017)
C	Village of Kiryas Joel – Wastewater Plan Headworks Loading Analysis Report
D	Village of Kiryas Joel 1994 SPDES Discharge Permit
E	Village of Kiryas Joel 1999 SPDES Permit Renewal
F	Village of Kiryas Joel 2004 SPDES Permit Renewal
G	Village of Kiryas Joel 2009 SPDES Permit Renewal
H	Meeting Agendas: September 14, 2011; December 18, 2014; March 16, 2015
I	Laberge Group December 15, 2014 Letter to DEC re. November 17, 2014 Inspection Summary and Notice of Violation
J	Orange County Sewer Use Law, Local Law 4 of 2008
K	Harriman Wastewater Treatment Plant SPDES Permit
L	Lease of the Village Wastewater Treatment Plant between the Village and Orange County Sewer District No. 1, dated June 15, 2000
M	Lease renewal of the Village Wastewater Treatment Plant between the Village and Orange County Sewer District No. 1, dated December 18, 2009
N	Lease renewal of the Village Wastewater Treatment Plant between the Village and Orange County Sewer District No. 1 dated April 1, 2013
O	Kiryas Joel Poultry Industrial Wastewater Discharge Permit, Significant Industrial User
P	OCSO No. 1 Invoice to Kiryas Joel Poultry, dated June 3, 2020
Q	May 24, 2019 Letter and Enclosure from Whiteman Osterman & Hanna LLP to Department of Environmental Conservation regarding KJWWTP
R	March 23, 2015 Consent Decree between US EPA and Kiryas Joel Poultry
S	Hearing Request dated November 14, 2019
T	Department of Environmental Conservation, April 10, 2018 Notice of Complete Application
U	SEQRA EAF and Negative Declaration dated April 6, 2018
V	Final Renewed and Modified SPDES Permit, Responsiveness Summary, and SPDES Fact Sheet, dated October 16, 2019
W	Decision of the Commissioner – In the Matter of Orange County Department of Public Works, January 29, 2020
A1	Letter from Orange County Department of Public Works (Div. of Environmental Facilities Services) to the Kiryas Joel Plant, re. Significant Noncompliance / Notice of Violation, dated July 29, 2011

B1	NPDES Pretreatment Compliance Sampling for Kiryas Joel Poultry Plant, dated September 26, 2017
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Exhibit	Description
0	Curriculum Vitae of Steven E. Adams, P.E.
1	Table 1 – Ambient Water Quality Standards or Guidance Values by Stream Class (TOGS 1.1.1 and 6 NYCRR 701) and Permit Discharge Limits Comparison Table
2	Laberge Group Freedom of Information Law Request Letter
3	November 1994 Notice of Adoption of Stream Classification change - NYS Register Pages 9-12
4	June 28, 1994 Department Letter to Town of Woodbury Supervisor
5	The NYS Consolidated assessment and listing methodology; §305(b) excerpts – land use and character p. 4; aquatic life use support – dissolved oxygen and pH p. 18
6	Original SPDES Fact Sheet
7	6 NYCRR 701 Stream Classification Best Uses Class C&D
8	TOGS 1.3.1.E WQB Amendment – Certain Parameters, July 1996
9	TOGS 1.1.1 Ambient Water Quality Standards – selected pollutant excerpts highlighted
10	Laberge Group Draft SPDES Permit Comments & Attachments
11	POTW Site Plan
12	Pro-forma Opinion of Capital Improvement Costs – Ammonia and Nitrite Removal Improvements
13	Ramapo River Stream Assessment Survey – Data Report, July 1, 2019, FIG. 14 – pH sample values

Exhibit List - New York State Department of Environmental Conservation

Exhibit	Description
A	USEPA Technical Support Document, dated March 1991
B	Plans & Specifications Approval, Certificate of Construction dated April 27, 2000 & July 26, 2005
C	Permit Modification for General Condition, dated March 4, 2004
D	Admin. Renewals, dated February 4, 1999, November 19, 2003 & July 30, 2009
E	EBPS Request for Information, dated August 9, 2013
F	Unsigned Renewal Application, dated September 10, 2013
G	2015 Consent Order, dated January 21, 2015
H	2018 Consent Order, dated November 7, 2018
I	July 12, 2018 Meeting Attendance Sheet
J	August 16, 2019 Meeting Attendance Sheet
K	September 19, 2018 Response to Adams
L	Foil Request Tracking, dated February 18, 2020
M	Letter from Woodbury to DEC, dated May 10, 1994
N	Letter from Village to DEC, dated May 31, 1994
O	1992 Permit Application
P	Attorney General Statement, dated May 19, 1986
Q	EPA/DEC Pretreatment MOUs 1984 & 1992
R	2006 White Paper MOU, dated July 24, 2006
S	KJ Poultry Start-up, dated December 12, 2018 & January 20, 2004
T	Headworks Loading Analysis, dated May 8, 2017
U	Chlorides Study Report, dated August 2, 2014
V	OCSD's letter enclosing industrial user permit, dated November 4, 2013
W	EPA Audit of OCSD PTP, dated April 29, 2015
X	KJ Poultry PCR Example, dated July 2017
Y	KJ Poultry PCR Table, dated November 1, 2017
Z	Ramapo Stream Assessment Survey, dated July 1, 2019
AA	Relevant Contributions of TDS, dated November 1, 2020
BB	OCSD Letter to DEC, dated February 27, 2015
CC	Measured Salinity, dated November 1, 2020
DD	Kiryas Joel Sewer Use Law and Objectionable Substance Limitations Table
EE	US v. KJPPP, dated October 23, 2014
FF	6 NYCRR 860 Map
GG	Letter from DEC to Village, dated March 31, 2017
HH	Email Correspondence from EPA to DEC, dated February 18, 2021
JJ	OCSD No. 1 HWWTP: Industrial Pre-treatment Program Semi Annual Reports, dated April 2018 & April 2019

*I note that there is no DEC Exhibit II.

Exhibit List - Petitioner Kiryas Joel Meat Market, Inc. & Kiryas Joel Poultry Processing Inc.

Exhibit	Description
A	Consent Decree, USA v. Kiryas Joel Meat Market, Inc. and Kiryas Joel Poultry Processing Plant Inc., filed on March 23, 2015
B	Engineering Report Outline for New York State Water Infrastructure Products, dated October 1, 2019
C	Introduction to the National Pretreatment Program, dated May 2011