

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of the Violations of Articles 17 and 25 of the New York State Environmental Conservation Law, Article 12 of the New York State Navigation Law, and Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York,

ORDER ON CONSENT

-by-

**NYSDEC File No.
R2-20170614-221**

CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC.,

Respondent.
-----X

WHEREAS:

1. The New York State Department of Environmental Conservation ("NYSDEC") is an executive department of New York State authorized under Article 3 of the New York State Environmental Conservation Law ("ECL") to provide for the prevention and abatement of all water, land, and air pollution within the state;
2. It is the responsibility of NYSDEC to conserve, improve, and protect New York State's natural resources and environment and control pollution in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being;
3. In carrying out its responsibilities, NYSDEC has the power to promote and coordinate the management of water, land, fish, wildlife, and air resources to assure their protection, enhancement, provision, allocation, and balanced utilization consistent with the environmental policy of New York State and take into account the cumulative impact upon all such resources in making any determination in connection with any license, order, permit, certification, or other similar action;
4. NYSDEC is authorized to enforce the containment and remediation of petroleum discharges pursuant to ECL Article 17, Article 12 of the New York State Navigation Law ("NL"), and Titles 6 and 17 of the Official Compilation of Codes, Rules, and Regulations of the State of New York ("NYCRR");
5. NYSDEC has jurisdiction over the abatement and prevention of pollution of waters of the state pursuant to ECL Article 17 and Title 6 of NYCRR ("6 NYCRR");
6. NYSDEC has jurisdiction over the management of tidal wetlands and tidal wetlands adjacent areas and thus regulates, among other activities, the placement of fill and other materials therein by requiring permits for such activities pursuant to ECL Article 25 and 6 NYCRR Part 661;

7. NYSDEC carries out New York State's role as trustee of natural resources pursuant to ECL §§ 1-0101 and 15-0105 and NL § 171;

8. CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. ("Respondent") is a domestic business corporation licensed to do business in New York State and is a "person" as defined in ECL §§ 17-0105 and 25-0103; and

9. Respondent owns and manages the Farragut Substation at 89 John Street, Brooklyn, New York, 11201, which is located near the East River (the "Site").

FACTS

10. On May 7, 2017, an internal fault within an electric transformer caused the transformer wall to crack and resulted in the discharge of approximately 30,000 gallons of dielectric fluid at the Site. The discharge was assigned NYSDEC spill number 1701182 (the "Spill").

11. The Spill entered the East River, impacting the waterway, its tidal wetlands, and its tidal wetlands adjacent areas.

12. The Spill resulted in a sheen visible from the Williamsburg Bridge to Governors Island.

13. Within three hours of the Spill, Respondent deployed booms in the East River and began landside cleanup. Contractors employed by Respondent used absorbents and skimmer technology to remove dielectric fluid from the East River.

14. Additionally, Respondent implemented the following countermeasures in response to the Spill: soil excavation, construction of recovery wells, recovery of oil and oily material, and deployment of a standby oil response contractor.

15. As a result of the Spill, residual dielectric fluid continued to discharge into the East River until June 22, 2017.

16. The Spill contained approximately 6-8 ppm of polychlorinated biphenyl ("PCB").

17. The East River is a Class I surface water of New York State. Pursuant to 6 NYCRR § 701.13, Class I waters shall be suitable for fish, shellfish, and wildlife propagation and survival and the water quality shall be suitable for primary contact recreation.

18. The East River is a tidal wetland that is regulated under ECL Article 25.

19. Respondent did not have either a State Pollutant Discharge Elimination System ("SPDES") permit or a tidal wetlands permit authorizing either the Spill or residual discharge.

LAW

20. NL § 173 states: "The discharge of petroleum is prohibited."

21. NL § 192 states: “Any person who . . . violates any of the provisions of this article or any rule promulgated thereunder or who fails to comply with any duty created by this article shall be liable to a penalty of not more than twenty-five thousand dollars for each offense in a court of competent jurisdiction. If the violation is of a continuing nature each day during which it continues shall constitute an additional, separate and distinct offense.”

22. ECL § 17-0501.1 states: “It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301.”

23. Pursuant to ECL § 17-0301, 6 NYCRR § 703.6(e) establishes a groundwater effluent limitation for PCB of 0.00009 ppm.

24. ECL § 17-0503 states: “1. Sewage, industrial waste or other wastes, or any substance injurious to edible fish and shellfish, or the culture or propagation thereof, or which shall in any manner affect the flavor, color, odor or sanitary condition of such fish or shellfish as to injuriously affect the sale thereof, or which shall cause any injury to the public and private shell fisheries of this state shall not be placed or allowed to run into the waters of the state in the marine district nor into any waters of Long Island, tributary to the marine district. 2. Garbage, cinders, ashes, oils, sludge or refuse of any kind shall not be thrown, dumped or permitted to run into the waters of the marine district.”

25. ECL § 17-0505 states: “The making or use of an outlet or point source discharging into the waters of the state, and the operation or construction of disposal systems, without a valid SPDES permit as provided by section 17-0701 or title 8 hereof are prohibited.”

26. ECL § 17-0511 states: “The use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article.”

27. ECL § 17-0701.1 states: “It shall be unlawful for any person, until a written SPDES permit therefor has been granted by the commissioner, or by his designated representative, and unless such permit remains in full force and effect, to: a. Make or cause to make or use any outlet or point source for the discharge of sewage, industrial waste or other wastes or the effluent therefrom, into the waters of this state, or b. Construct or operate and use a disposal system for the discharge of sewage, industrial waste, or other wastes or the effluent therefrom, into the waters of the state, or make any change in, addition to or an extension of any existing disposal system or part thereof which would materially alter the volume of, or the method or effect of treating or disposing of the sewage, industrial waste or other wastes, or c. Increase or alter the content of the wastes discharged through an outlet or point source into the waters of the state by a change in volume or physical, chemical or biological characteristics.”

28. ECL § 17-0803 states: “Except as provided by subdivision five of section 17-0701 of this article, it shall be unlawful to discharge pollutants to the waters of the state from any outlet or

point source without a SPDES permit issued pursuant hereto or in a manner other than as prescribed by such permit.”

29. ECL § 17-0807 states: “The following discharges into the waters of the state are hereby prohibited[:] . . . any discharge not permitted by the provisions of this article, rules and regulations adopted or applicable pursuant hereto, the [Federal Water Pollution Control] Act, or provisions of a permit issued hereunder.”

30. 6 NYCRR § 750-1.4(a) states: “[N]o person shall discharge or cause a discharge of any pollutant without a SPDES permit having been issued to such person pursuant to this Part and ECL Article 17, title 7 or 8, with respect to such discharge; and no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit.”

31. ECL § 71-1929.1(a) states: “A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation”

32. ECL § 25-0401.1 states: “[N]o person may conduct any of the activities set forth in subdivision 2 of this section unless he has obtained a permit from the commissioner to do so.” In turn, ECL § 25-0401.2 states: “Activities subject to regulation hereunder include . . . any form of dumping, filling, or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind . . . and any other activity within or immediately adjacent to inventoried wetlands which may substantially impair or alter the natural condition of the tidal wetland area.”

33. 6 NYCRR § 661.8 states: “No person shall conduct a new regulated activity on or after August 20, 1977 on any tidal wetland or any adjacent area unless such person has first obtained a permit pursuant to this Part.”

34. 6 NYCRR § 661.4(ee)(1) defines “regulated activity” as including “any form of dumping, filling or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish or fill of any kind; . . . any form of pollution; [and] . . . any other new activity within a tidal wetland or on an adjacent area which directly or indirectly may substantially alter or impair the natural condition or function of any tidal wetland.”

35. ECL § 71-2503.1(a) states: “Any person who violates, disobeys or disregards any provision of article twenty-five shall be liable to the people of the state for a civil penalty of not to exceed ten thousand dollars for every such violation Each violation shall be a separate and distinct violation and, in the case of a continuing violation, each day’s continuance thereof shall be deemed a separate and distinct violation.”

VIOLATIONS

36. As a result of the discharge of dielectric fluid as described in paragraphs 10 through 19, above, Respondent violated NL § 173, ECL §§ 17-0501.1, 17-0503, 17-0505, 17-0511, 17-0701.1, 17-0803, 17-0807, and 25-0401.1, and 6 NYCRR §§ 661.8 and 750-1.4(a).

CONSENT

37. In settlement of its civil liability for the aforesaid violations, Respondent admits the violations set forth herein, waives its right to a hearing herein as provided by law, consents to the issuing and entering of this Order on Consent (the "Order") pursuant to the provisions of Articles 17, 25, and 71 of the ECL and Article 12 of the NL, and agrees to be bound by the provisions, terms, and conditions herein.

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

I. Civil Penalty: In settlement of the violations set forth above, Respondent is assessed a total civil penalty in the amount of \$550,000, of which \$464,915 is payable by three separate checks as follows:

- A. \$253,590 payable to "Environmental Protection and Spill Compensation Fund;"
- B. \$126,795 payable to "NYSDEC;" and
- C. \$84,530 payable to "NYSDEC Marine Resources Account."

Respondent shall submit the above-referenced payments, along with this signed and notarized Order, to Madeline Gwyn Warner, Assistant Regional Attorney, NYSDEC, Office of General Counsel, 47-40 21st Street, Long Island City, NY, 11101.

The remaining \$85,085 shall be suspended pursuant to NYSDEC's Environmental Benefit Projects Policy: CP-37 and contingent on Respondent's compliance with paragraph II of this Order, below.

II. Environmental Benefit Project: Immediately upon execution of this Order, Respondent shall pay to fund the Environmental Benefit Project described in Attachment A of this Order (the "EBP") by submitting a check payable to "Brooklyn Bridge Park Conservancy, Inc." in the amount of \$100,100 to Madeline Gwyn Warner, Assistant Regional Attorney, NYSDEC, Office of General Counsel, 47-40 21st Street, Long Island City, NY 11101. Any statements made, whether by Respondent or a third party on behalf of Respondent, with respect to the EBP must include language making clear that the EBP was undertaken as part of the settlement of a NYSDEC enforcement action for violations of the ECL and NYCRR.

III. Natural Resource Damages: Respondent shall pay to fund, in the amount of \$71,000, the Resource Restoration Project described in Attachment B of this Order (the "RRP"), pursuant to the following terms:

A. Within fifteen days of the effective date of this Order, NYSDEC will publish the proposed RRP for a thirty day public comment period. Within thirty days of completion of the public comment period, NYSDEC will address any public comments and decide whether to finalize the proposed RRP.

B. If NYSDEC, in its sole discretion, finalizes the proposed RRP, Respondent shall, within fifteen days of receiving notice of NYSDEC's decision, make payment of \$71,000 for the implementation of the RRP by a check payable to "New York City Audubon" and provide NYSDEC with proof of payment. If payment is made to implement the RRP and the RRP is not reported complete by December 31, 2019, Respondent or New York City Audubon may petition NYSDEC once for an extension of time to complete the RRP.

C. If NYSDEC, in its sole discretion, does not finalize the proposed RRP, Respondent shall, within fifteen days of receiving notice of NYSDEC's decision, make payment of \$71,000 to NYSDEC by a check payable to "NYSDEC Natural Resource Damages Fund" and send such payment to NYSDEC, Natural Resource Damages Section, 625 Broadway, 14th Floor, Albany, NY 12233.

D. NYSDEC will be the sole judge of whether Respondent has complied with the terms of this Order as it relates to satisfactory implementation of the RRP.

E. Any statements made, whether by Respondent or a third party on behalf of Respondent, with respect to the RRP must include language making clear that the RRP was undertaken as part of the settlement of a NYSDEC enforcement action for violations of the ECL and NYCRR.

F. Communications with NYSDEC regarding the RRP shall be made to Jared Reed, NYSDEC, Natural Resource Damages Section, 625 Broadway, 14th Floor, Albany, NY 12233 or jared.reed@dec.ny.gov. Contact information for a representative from Respondent authorized to provide information regarding the RRP shall be transmitted to Mr. Reed within fifteen days of the effective date of this Order.

G. Communications with New York City Audubon regarding the RRP may be made to Susan B. Elbin, New York City Audubon, 71 West 23rd Street, New York, NY 10010.

IV. Default of Payment: The penalty, including the EBP funding, and natural resource damages assessed in this Order constitute a debt owed to New York State. Failure to pay the penalty or the natural resource damages or any part thereof in accordance with the schedule contained in this Order may result in referral to the New York State Office of the Attorney General for collection of the entire amount owed (including the assessment of interest and a charge to cover the cost of collecting the debt) or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to Respondent by New York State by the penalty amount and the natural resource damages amount.

V. Compliance Schedule: Respondent shall comply with the schedules set forth in Schedule A and Schedule B of this Order.

VI. Access: For the purpose of monitoring compliance with this Order, authorized representatives of NYSDEC shall be permitted access to relevant facilities and records during reasonable hours at such times as may be desirable or necessary in order to inspect and determine the status of compliance.

VII. Violation of this Order: NYSDEC reserves the right to initiate actions based upon the violation of this Order and also to seek penalties for additional violations, including continued violations, occurring after the effective date of this Order. Whether Respondent is in violation of this Order shall be the sole determination of NYSDEC.

VIII. Binding Effect: The provisions of this Order bind Respondent, its successors and assigns, and all persons, officers, directors, employees, servants, and agents acting under or for Respondent.

IX. Indemnification: Respondent shall indemnify and hold harmless New York State, NYSDEC, and any of their employees, agents, or contractors for all claims, actions, damages, and costs resulting from Respondent's acts in fulfillment or attempted fulfillment of the provisions of this Order by Respondent or any of Respondent's officers, directors, employees, servants, agents, successors, and assigns.

X. Satisfaction of Liability: Compliance with all the material terms of this Order will satisfy Respondent's outstanding liability for the violations described above and all claims for natural resource damages and costs resulting from the Spill.

XI. Reservation of Rights: NYSDEC reserves the right to require Respondent to take any additional measures required by law to protect human health and the environment. Nothing in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of NYSDEC's rights, remedies, or authorities, including, but not limited to, the right to require performance of further investigations or response actions or to exercise any of NYSDEC's summary abatement powers. NYSDEC reserves the right to proceed against Respondent and its successors for recovery of natural resource damages based on conditions that were unknown to NYSDEC or were undiscoverable with the exercise of due diligence as of the effective date of this Order and contribute to a material increase in injury to, destruction of, or loss of natural resources or based on information that was received after the effective date of this Order and indicates a material injury to, destruction of, or loss of natural resources of a type or extent unknown to NYSDEC or undiscoverable with the exercise of due diligence as of the effective date of this Order.

XII. Entire Agreement: This Order constitutes the entire agreement of the parties. No informal advice, guidance, suggestions, plans, schedules, or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order. No changes to this Order will bind Respondent unless authorized in writing by the NYSDEC Region 2 Director or his/her designee.

XIII. Miscellaneous:

A. This Order resolves only those violations specifically described herein and does not relieve Respondent of liability for any acts, omissions, or violations not articulated herein, nor does it relieve Respondent of any liability pursuant to the jurisdiction of any other local, state, or federal agency.

B. Respondent and its successors and assigns are bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's obligations under this Order. Respondent shall cause its officers, directors, employees, servants, agents, contractors, and subcontractors to comply with the relevant provisions of this Order and Respondent shall be solely responsible for ensuring that its employees, servants, agents, contractors, and subcontractors perform the work in satisfaction of the requirements of this Order.

C. Except as the parties may both otherwise approve, in the event of an inconsistency between the provisions of this Order and any term, condition, or provision contained in any other agreement between Respondent or its representative and NYSDEC, the term, condition, or provision contained in this Order shall control.

D. Notwithstanding anything to the contrary in this Order, Respondent shall not be deemed in breach of this Order due to an unforeseeable disaster arising exclusively from natural causes that the exercise of ordinary human prudence could not have prevented, a war, hostilities, an invasion, an embargo, a blockade, an epidemic, an insurrection, a riot, mob violence, malicious mischief, sabotage, an injunction, or other similar cause beyond the control of Respondent and not caused by the action, omission, or delay of Respondent, provided that Respondent notifies NYSDEC in writing not later than five days after Respondent has actual notice of the occurrence delaying the performance of Respondent's obligations under this Order and Respondent has used best efforts to minimize the effects of the delay. Respondent shall include in its notice to NYSDEC the measures taken and to be taken by Respondent to prevent or minimize any effects of the delay and shall request an appropriate extension or modification of this Order. Failure to give such notice to NYSDEC within a five-day period constitutes a waiver of any claim that an occurrence delaying performance is not subject to penalties. Respondent will have the burden of proving that an occurrence is a defense to compliance with this Order.

E. The effective date of this Order is the date it is signed on behalf of NYSDEC.

DATED: Long Island City, New York
JULY 17, 2018

BASIL SEGGOS
Commissioner
NYSDEC

By: SMZ, ~~PATRICK FOSTER, RA~~
FR STEPHEN M. ZAHN
Regional Director
NYSDEC Region 2

CONSENT BY RESPONDENT

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the terms, conditions, and provisions contained in this Order.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By [signature]: *[Handwritten Signature]*

Print name: Elizabeth D. Moore

Title: Senior Vice President and General Counsel

Date: July 12, 2018

ACKNOWLEDGMENT

STATE OF NEW YORK)

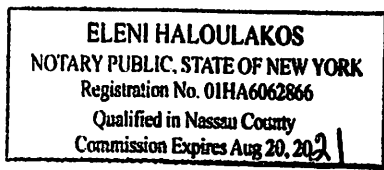
ss:

COUNTY OF NEW YORK)

On the 12th day of July in the year 2018, before me, the undersigned, personally appeared Elizabeth D. Moore, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed this Order on Consent as authorized by

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Eleni Haloulakos
NOTARY PUBLIC



ATTACHMENT A



About the Brooklyn Bridge Conservancy

The Brooklyn Bridge Park Conservancy (the Conservancy) began as a grassroots organization representing more than 60 community groups and block associations. Originally known as the Friends of Fulton Ferry Landing, the coalition formed in 1985 as a response to the Port Authority of NY & NJ's decision to sell vacant waterfront piers for commercial development. Today, the Conservancy is the 501c3 that offers free and low-cost, year-round, cultural, recreational, and environmental education programs, ensuring that Brooklyn Bridge Park is not only a neighborhood, but a city-wide destination. More than 1.6 million park visitors have participated in the Conservancy's programs since 2000.

Brooklyn Bridge Park is a world-class, 85-acre, sustainable waterfront park which spans 1.3 miles from Jay Street, north of the Manhattan Bridge, to Pier 6 and Atlantic Avenue on its southern side. In 2017, more than 175,000 visitors enjoyed more than 600 free cultural recreational and educational activities offered by the Conservancy.

Demographics on our park visitors include the following:

- 57% women and 43% men
- 40% white, 20% black, with the remainder equally divided among Hispanic, Asian and other population groups
- 75% aged 18-50; 10% under the age of 18
- 75% of attendees access the park via public transportation
- Neighbors (zip code 11201) represent 25% of daily park visitors via foot traffic

Project Title: *Brooklyn Bridge Park Conservancy 2018 Water-Based Environmental Education and Kayaking*

Project Location: This project would take place in Brooklyn Bridge Park, along the waterfront, as well as at our Environmental Education Center on Plymouth Street. The Environmental Education Center is a 1,200 square-foot, open-plan space. In addition to classroom time, the Center is open to the public on Tuesdays and Thursdays, 3-5pm and Saturdays and Sundays, 1-5pm. The Center's two signature exhibits are the East River Aquarium and the Discovery Station. The 250-gallon aquarium with touch tank showcases fish and invertebrates from the Hudson River Estuary. These organisms are collected during seining classes, carefully monitored, and regularly released back into the river. The touch tank is child-friendly, and visitors can gently interact with the marine animals.

Estimated Budget

While our Environmental Education budget is over \$500,000, we would apply DEC funding to a water-based educational and kayaking budget of \$101,100. New funding is critical to this programmatic expansion, which further connects young children and families to the Brooklyn waterfront.

**BROOKLYN BRIDGE PARK CONSERVANCY
2018 WATER BASED EDUCATION PROGRAM BUDGET**

PROJECTED EXPENSES

Personnel	
5 Seasonal Summer Associates	25,000
Benefits and Payroll Taxes	3,750
Direct Program Expense	
Aquarium Maintenance	20,000
Animal Care	5,000
Kayaks & Kayaking Equipment	15,000
Seining/Kayaking Instructors (non-staff)	3,000
Coastal Cleanup/Seining Supplies	3,000
2 Multiparameter Water Quality Probes	7,400
Year Supply of High-Quality Water Testing Kits	2,000
New Rubber Fish Molds for Discovery Station	5,450
Mobile Technology needed for Waivers and Demographic Tracking	3,500
Welcome Desk for Education Center	6,000
Jelly Fish Tank and Supplies	1,000
TOTAL EXPENSE	100,100

Project Description: Water-Based Environmental Education

Since 2008, the Conservancy's environmental education programs for New York City students have served over 84,000 young people, ages 4-18, from public schools and city-run, free day camps. The Conservancy's environmental education students represent every zip code in Brooklyn. 30% of our classes are free to students living at or below the poverty line. In total, 63% of the Conservancy's classes serve Title 1 schools. 54% of our students speak English as a second language.

Our Environmental Education Center serves as home base for our education classes, with the park itself serving as a living laboratory that provides hands-on experience connecting kids to the waterfront environment. The Conservancy offers nine distinct classes with adaptable curricula both at the Education Center and throughout the park, but would apply funding to the water-based curriculum, including:

- 1) *Rove the Cove* (grades K-8): Defining an estuary; water quality testing; shoreline investigation
- 2) *Seining the River Wild* (all ages): Collecting and studying the remarkable creatures living in the East River. Participants are invited to the shoreline to discover organisms caught in seine nets which we haul through the East River. These 20-foot-long nets have caught animals like blue crabs, striped bass, and comb jellies.
- 3) *Weather on the Water* (grades K-1): Using the park to understand the attributes of weather

- 4) *The Awesome Oyster* (grades 2-8): Exploring the ecology and rich history of oysters in New York Harbor. This class uses several Billion Oyster Project Oyster Restoration Stations found in the park and as part of the curriculum, students monitor oysters and collect scientific data on water quality, oyster growth, and biodiversity.

For *Rove the Cove* and *Seining the River Wild* classes, students measure water quality using pH and dissolved oxygen (DO) tablets. The results of these tests are not always accurate and tend to be inconsistent. By upgrading our collection kits, we would not only have better results, but also expose students to various methods of testing and real data collection methods.

The Conservancy and its students have been collecting water quality data through our seining program for the past ten years. However, we have been using basic instruments such as pH tablets and hydrometers. Upgrading to a multiparameter water probe would increase the efficiency and quality of data collected. We share our historical data with institutions such as DEC (for the Great Fish Count) and Nyack College (for viewing trends over time). Also, this information could be shared, explained and analyzed with older students through our School Programs such as TIDES, Teen Thursday After-school program and St. Francis after-school program.

Moon and comb jelly fish are common catches during our Seining program. We would love to be able to bring these organisms back to the Environmental Education Center to increase exposure of these organisms to the public and to make the public aware of the great diversity of the estuary. This funding would provide the necessary tank and food. Rubber Fish Molds in our Discovery Station are showing wear-and-tear, so this funding would also allow us to replace moldings that are more than 3 years old as well as purchase new molds. Each of these represents fish that live in the East River and are largely unknown to NYC kids. This part of our station is wildly popular (hence the need for replacement) and children get to take their sketches/traces home to share what they've learned with their families.

The Welcome Desk will increase efficiency and enhance the visitor experience, enabling staff and visitors to get to lesson plans, teaching, and hands-on experiences more quickly. It professionalizes the space and will be a place to collect participant data.

Kayaking

We also would also utilize funding for our very popular kayaking classes and camps, some of which had to be canceled last summer, due to the water conditions. Brooklyn Bridge Park Conservancy introduced boating to Brooklyn Bridge Park in 2008 in partnership with the Brooklyn Bridge Park Boathouse. When in full operation, the Conservancy's free walk up kayaking serves around 6,000 a year, taking place every Saturday from 10-3pm and Thursday evenings June through September. With support from DEC, we would be able to purchase additional kayaks and employ more instructors. We anticipate adding a full Sunday session, which would allow us to nearly double the number of people we put on the water.

The Conservancy also collaborates with Brooklyn Kayak Guides and the Brooklyn Bridge Park Boathouse to provide special camps designed to introduce kayaking to students from 11-18 years of age. Since 2011, 2022 young people from 33 schools and camps have participated in 106 sessions. Goals of our kayaking programs and camps include:

- Making our free boating programs available to a greater number of youth
- Reconnecting New Yorkers to the waterfront and take full advantage of the East River as an amazing educational and recreational resource
- Introducing a new form of recreation and physical activity—kayaking—to young people

Our basic *Learn to Kayak* program includes safety and protocol lessons, warm-up exercises, individual life-vest fitting, elementary stroke work, an hour on the water, and an estuary ecology lesson. *Progressive Kayak Skills* takes participants from beginners to intermediate kayakers, with the final day featuring a trip outside the embayment.

The Conservancy is also interested in understanding attitudinal shifts before and after a session and would apply DEC funding toward this effort. Answering questions like: Have you ever been kayaking before? Have you been in the East or Hudson Rivers for recreational purposes? How would you describe the water quality and what are you comparing that to?

Environmental Benefits and Relevance

Were it a city, the Borough of Brooklyn would be the fourth largest city in the country, and second only to Las Vegas in having the smallest amount of green-space per capita. Many residents live in landlocked areas, disconnected from any natural environment, and a significant number of youth, in particular, have never visited the waterfront. A visit to a Conservancy class, program, event, or workout has the power to change perceptions and potentially chart new courses for New York City children and families.

Project Category: The Conservancy's proposal would meet the following DEC categories: Environmental Restoration/Habitat Improvement; Environmental Education/Public Awareness; Water Quality Improvement/Monitoring.

ATTACHMENT B

RESOURCE RESTORATION PROJECT PLAN

Securing the Future for Common Terns Nesting on Governors Island, Manhattan NYC Audubon

Background

The Common Tern (*Sterna herundo*) is the most widespread tern species in North America. It nests along the Atlantic Coast from South Carolina to the Canadian Maritimes, as far west as Alberta, and winters in the northern coastal region of South America. *S. herundo* recovered from being nearly hunted to extinction in the 19th century for its decorative feathers. Over the last 50 years, its western Atlantic Flyway population has declined again, and is currently listed as a threatened species in New York State. Other states within the Atlantic Flyway list the Common Tern as a seabird species that is endangered, threatened, or of special concern.

A lack of suitable nesting habitat is one of the most prevalent factors limiting the Common Tern population. Terns have a wide range of nesting habitats, including isolated beaches, dunes, marshes, small islands (natural and artificial), and on rooftops when a suitable habitat cannot be found. Further obstacles impeding successful nesting are human disturbance, animal predation, and competition from other seabirds—primarily gulls (Family: *Laridae*). Climate change is intensifying these ecological pressures, as rising sea levels, severe storms, and warmer waters are negatively affecting the populations of prey fishes, and depleting habitable areas.

While the New York Harbor, set within a bustling cityscape teeming with people and industrial activities, seems like an unlikely place for the Common Tern to nest, seabirds have been reclaiming the harbor as their home. Following the passage of the Clean Water Act, the water quality of New York's navigable waters has greatly improved, encouraging wildlife to return and nest. In New York City, Common Terns nest on marsh islands and beaches in Jamaica Bay's parklands. National Park Service staff at Gateway National Recreation Area and New York City Parks and Recreation staff on the Rockaways monitor terns nesting on those sites. Common Terns also nest on the concrete slabs of dilapidated piers on Governors Island, a 172-acre former military island that became a park in 2003. New York City Audubon staff have been monitoring that nesting colony site since 2012, and banding the terns since 2013.

Little is known about the migratory and wintering behavior of the New York City Common Tern population with respect to the mid-Atlantic population. A bird tagged in Argentina nested on Governors Island in 2015, which offers a tantalizing bit of data on migratory routes. More research needs to be done to better understand the extent of tern migration.

While the Governors Island piers have provided nesting sites for the birds since around 2010, their continued ability to provide safe nesting sites is not guaranteed. In 2013, part of one of the piers partially collapsed into the channel. In 2015, the rest of it collapsed.

As rising seas and urbanization continue to constrict seabird nesting habitats along the East Coast, urban tern colonies are becoming increasingly important to the overall conservation of the Atlantic Flyway population. Successful provision of suitable New York City habitat will support conservation research efforts in other coastal urban areas. Moreover, New York's Common Terns are appealing ambassadors for urban biodiversity – especially on Governors Island, where the protective parents can raise their hatchlings while being appreciated from a safe distance by the public. Creating a high profile protected environment will raise public awareness and support for seabird conservation.

Project Description

Since its foundation in 1979, New York City Audubon has a rich history of working towards the conservation of waterfowl and seabirds.

New York City Audubon has been monitoring and banding Common Terns on Governor's Island since June 2013. Approximately 120 pairs annually nest on the two decommissioned piers, and some have been found on a third active pier which extends into Buttermilk Channel. The birds nesting on the third, active pier have been a focus of research for NYC Audubon. In 2014, Audubon enhanced the nesting habitat, which resulted in a 33% increase of nesting pairs. This population growth was short-lived, as just two years later American Herring Gulls (*Larus smithsonianus*) outcompeted the Common Terns, completely excluding the terns from that pier. To remedy this, gull deterrents were installed and habitat enhancements were made, and in 2017, thirty-three pairs returned to the pier to nest.

This project will assess the dynamics and demographics of the Governors Island Common Tern population, and will begin to evaluate their role in the greater regional population. This colony will be accessible to New Yorkers remotely through a webcam and directly through NYC Audubon's annual "It's Your Tern" festival and outreach event.

Approach

1) Expand current management efforts to increase the nesting colony at Governors Island.

Of the two decommissioned piers where Common Terns nest, one is inaccessible for management, but the other (Lima Pier) can easily support 66 to 100 pairs – up to triple the current number on that pier. Intermittent use of the pier by The Trust for Governors Island has restricted the colony to a small section. The proposed objective aims to improve and expand viable nesting habitat on Lima Pier by: 1) collaborating with the Trust to dedicate more pier space to the colony; 2) using gull exclusion grids and a gull-chasing dog to reserve the location for tern nesting; 3) covering more of the cement substrate with crushed oyster shells as a nesting material; and 4) attracting more terns by augmenting decoys with audio lures of active tern colonies. Audubon also propose to install a high-power tilt-and-pan nest cam on the inaccessible pier to facilitate monitoring the terns and give the public a closer look at our urban wildlife.

2) Track and map Common Terns (adult and hatching year birds) from the harbor colonies to determine their migration routes and wintering sites.

This objective will identify threats as well as potential conservation partners in the places these terns visit. To achieve this, New York City Audubon will: 1) Attach geolocators (devices that determine the daily latitude and longitude of the bird for a year) to 10 adult nesting Common Terns on Governors Island; 2) Attach NanoTags (devices that transmit a unique frequency for each bird to datalogger towers along the Eastern Seaboard, to record where the terns travel and how long they stay at stopover sites) to 10 untagged adult terns; and 3) continue banding Common Tern adults and young-of-the-year on Governors Island and expand our ongoing banded bird re-sighting efforts to include birds staging for migration in wetlands of Staten Island and Jamaica Bay.

3) Analyze demographic and population data on Common Terns nesting on manmade and natural islands in an urban estuary (NYC) in relation to that of a remote island located in the Atlantic Flyway.

The third objective of this project is to add context to the collected data about Governors Island nesting by comparing it to non-urbanized island in the flyway. Using standardized protocols for data collection, the reproductive success and population trends of several locations will be compared to better understand constraints and trends across the flyway. Dr. Elizabeth Craig, The University of New Hampshire, has similar data for the Isle of Shoals, off New Hampshire’s coast. Data analysis from this project will be subject to peer review before publication in a scientific journal.

Project Budget, Schedule and Reporting

NYC Audubon is requesting a budget of \$71,000 for two field seasons – 2018/19.

Personnel	\$37,494
Supplies	\$6,700
Equipment	\$15,000
Travel	\$4,200
Administrative	<u>\$7,606</u>
TOTAL	\$71,000

Following each field season, NYC Audubon will provide a short summary of expenditures to date and work completed to Jared Reed (jared.reed@dec.ny.gov) at the New York State Department of Environmental Conservation.

RESPONSE TO PUBLIC COMMENTS RECEIVED

Comments on this Proposal to Spend Settlement Funds are due within 30 days of this proposed RRP in the New York State Environmental Notice Bulletin. Comments can be submitted to

Jared Reed
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233

or by email to jared.reed@dec.ny.gov. Mr. Reed can be reached at (518) 402-4890.

SCHEDULE A

NYSDEC Spill No. 1701182 Corrective Action Plan

1. Within sixty days of completion of the work specified in the December 2017 Site Investigation Work Plan submitted by Respondent to NYSDEC, Respondent shall submit to NYSDEC a Site Investigation Report/Remedial Investigation Report (the "SIR/RIR") for NYSDEC's review and approval. The SIR/RIR shall describe the nature and extent of subsurface petroleum contamination at the Site.
2. If NYSDEC provides comments on the SIR/RIR, Respondent, within fifteen days of receiving such comments, shall submit to NYSDEC a revised SIR/RIR addressing such comments for NYSDEC's review and approval.
3. Within sixty days of NYSDEC's approval of the SIR/RIR, Respondent shall submit to NYSDEC a Remedial Action Work Plan (the "RAWP") for NYSDEC's review and approval. The RAWP shall describe the work that will be undertaken to remediate the subsurface petroleum contamination at the Site. The RAWP shall include a schedule for such work.
4. If NYSDEC provides comments on the RAWP, Respondent, within fifteen days of receiving such comments, shall submit to NYSDEC a revised RAWP addressing such comments for NYSDEC's review and approval.
5. Upon NYSDEC's approval of the RAWP, Respondent shall implement the approved RAWP.
6. Within sixty days of implementation of the approved RAWP, Respondent shall submit to NYSDEC a Remedial Action Report (the "RAR") for NYSDEC's review and approval.
7. If NYSDEC provides comments on the RAR, Respondent, within fifteen days of receiving such comments, shall submit to NYSDEC a revised RAR addressing such comments for NYSDEC's review and approval.

SCHEDULE B

Multi-Site Petroleum Containment Assessment

Within three months of execution of this Order, Respondent shall submit to NYSDEC a report from an outside geotechnical engineering firm assessing compliance of current petroleum containment plans for oil-filled operational equipment with applicable federal and state regulations at each of the following thirteen substations (the "Substations"):

- the Site (the Farragut Substation at 89 John Street, Brooklyn, New York, 11201);
- Eastview Substation (415 Old Saw Mill River Road, Greenburg, New York);
- Ossining Substation (Central Avenue and Water Street, Ossining, New York);
- Vernon Substation (38-54 Vernon Boulevard, Long Island City, New York);
- Rainey Substation (34-54 Vernon Boulevard, Long Island City, New York);
- Academy Substation (320 West 201st Street, New York, New York);
- Sherman Creek Substation (425 West 201st Street, New York, New York);
- East 13th Street and Mill Yard Substation (723 East 13th Street, New York, New York);
- Goethals Substation (100 River Road, Staten Island, New York);
- Fresh Kills Substation (4325 Victory Boulevard, Staten Island, New York);
- Ramapo Substation (59 Torne Valley Road, Hillburn, New York);
- Gowanus Substation (99 27th Street, Brooklyn, New York); and
- Hudson Avenue East Substation (Hudson Avenue and Plymouth Street, Brooklyn, New York)



Department of Environmental Conservation

RECEIPT

NUMBER 627697

Region Number 2

Date 7/16/18

Location LIC

Division OGC

Received of Consolidated Edison Company of New York Inc.

In the amount of Two Hundred Fifty Three Thousand Five Hundred \$ 253,590. — Ninety

For R2-20170614-221 (SPILLS)

Paid in full

Cash Department Representative

Regina Seetahal

Check Number 0000659198 Title

Secretary

Money Order

ORIGINAL



Department of Environmental Conservation

RECEIPT

NUMBER 627698

Region Number 2

Date 7/16/18

Location LIC

Division OGC

Received of Consolidated Edison Company of New York, Inc.

In the amount of One Hundred twenty six thousand seven hundred \$ 126,795

For R2-20170614-221 (water) Ninety Five

Paid in full

Cash Department Representative

Regina Seelbach

Check Number 000659988 Title

Secretary

Money Order

ORIGINAL



Department of Environmental Conservation

NUMBER 627699

RECEIPT

Region Number 2

Date 7/16/18

Location LIC

Division OGC

Received of Consolidated Edison Company of New York, Inc.

In the amount of Eight four thousand Five Hundred thirty \$ 84,530

For R2-20170614-224 (Marine Resources)

Paid in full

Cash Department Representative

Check Number 000659993 Title

Money Order

Regina Seetahal
Secretary

ORIGINAL