

**29421**

DATE September 23, 2012

TO: Board of Acquisition and Contract

FROM: Thomas J. Lauro, P.E.  
Commissioner, Department of Environmental Facilities

SUBJECT: Resolution authorizing the County of Westchester ("County") to enter into an amendment (the "Amendment") to Consent Order Case No. CO 3-20080730-65 regarding certain mandated biological nutrient removal ("BNR") obligations (the "2008 BNR Consent Order") executed by the New York State Department of Environmental Conservation ("NYSDEC") on December 30, 2008

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The attached resolution authorizes the County of Westchester, acting by and through the Department of Environmental Facilities (the "Department") to enter into an amendment (the "Amendment", a copy of which is annexed to the resolution as backup) to Consent Order Case No. CO 3-20080730-65 regarding certain mandated biological nutrient removal ("BNR") obligations (the "2008 BNR Consent Order") executed by the New York State Department of Environmental Conservation ("NYSDEC") on December 30, 2008. The Amendment would adjust the County's obligations under the 2008 BNR Consent Order by extending certain interim deadlines, as well as including a requirement to implement a program supporting clean beaches, all as more fully set forth below. It should be noted that the Amendment does not change the December 31, 2017 termination date of the 2008 BNR Consent Order.

By way of background it should be noted that on December 9, 2008 pursuant to Act No. 240-2008 (the "2008 Act"), the Board of Legislators authorized the County to enter into the 2008 BNR Consent Order in place of and in order to adjust the County's obligations under the existing Consent Order, which was executed in 2004 (the "2004 Consent Order"). The 2004 Consent Order was executed in settlement of the administrative claims of the NYSDEC relating to, among other things, the County's anticipated noncompliance with state and federally mandated nitrogen limits to be imposed in the State Pollutant Discharge Elimination System ("SPDES") permits for the County-owned waste water treatment plants ("WWTPs") which discharge into the Long Island Sound ("LIS"), namely: (1) the New Rochelle WWTP; (2) the Mamaroneck Valley WWTP; (3) the Blind Brook WWTP; and (4) the Port Chester WWTP (collectively referred to as the "LIS WWTPs"). The 2004 Consent Order required the County to do work at all four (4) LIS WWTPs. Under the terms of the 2008 BNR Consent Order, the County was required to perform work only at the Mamaroneck Valley and New Rochelle WWTPs (the "Plants"), which was estimated to provide a cost savings of approximately Three Hundred Thirty-Eight Million (\$338,000,000) Dollars from the 2004

Consent Order. The 2008 Act also authorized equitable apportionment of the costs associated with compliance among all four (4) LIS Sanitary Sewer Districts (“SSD”), namely: (1) the New Rochelle SSD; (2) the Mamaroneck Valley SSD; (3) the Blind Brook SSD; and (4) the Port Chester SSD. In addition, the Board of Legislators adopted Bond Act No. 239-2008 to finance improvement of the Plants, including incidental costs associated therewith, identified in the County’s capital budget capital project SLI01 - Long Island Sound BNR Remediation.

During construction to upgrade the Mamaroneck Valley WWTP (the “Plant”) there were unintended releases of plastic media disks (in January and March 2011) from the Plant into the Long Island Sound. NYSDEC advised that the media releases constituted violations of Environmental Conservation Law Section 17-0803 (the “Violations”). As a consequence of the Violations, and subsequent work to prevent future occurrences, the Plant suffered setbacks with respect to implementation of its plan to upgrade the treatment facilities in accordance with the 2008 BNR Consent Order. As a result of this, the Westchester County Department of Environmental Facilities (the “Department”) felt it was prudent to request a six (6) month extension of the following two (2) interim deadlines included in Appendix “A” of the 2008 BNR Consent Order:

1) extend the December 31, 2012 deadline for Required Action No. 19 for completion of construction for phase I at the Mamaroneck WWTP in accordance with the approved design report until June 30, 2013 and

2) extend the June 30, 2013 deadline for Required Action No. 20 to operate to meet the Mamaroneck 12-MRA until December 31, 2013.

Similarly Appendix “B” required conforming changes to the durations associated with parameter – Mamaroneck 12-MRA as follows:

<u>Parameter</u>	<u>Duration</u>	<u>Interim Limit</u>
Mamaroneck 12-MRA	December 30, 2013 through December 30, 2014	829 lbs/day for the Mamaroneck WWTP
	December 30, 2013 through December 30, 2014	3,600 lbs/day for the aggregate of the New Rochelle, Blind Brook, and Port Chester WWTPs

Despite the above extension request, from an environmental perspective the County is successfully removing nitrogen ahead of schedule, as two (2) of the six (6) aeration tanks have already been modified and are operating and an additional two (2) tanks are expected to be removing nitrogen by the end of this year. Accordingly, the Department anticipates being able to operate four (4) aeration tanks in fully automated mode by the end of December 2012, six months ahead of the schedule contained in the 2008 BNR Consent Order.

As a result of the Violations related to the release of plastic media disks that occurred at the Plant, the NYSDEC has levied, against the County, a civil penalty in the amount of Thirty-Seven Thousand Five Hundred (\$37,500.00) Dollars (the "Fine"). NYSDEC further advised that Fifteen Thousand (\$15,000.00) Dollars of the Fine is payable immediately upon execution of the Amendment, while the remaining Twenty-Two Thousand Five Hundred (\$22,500.00) Dollars will be suspended, provided that the County adheres to the terms and conditions of the Amendment.

NYSDEC is also requiring the County to set aside an additional Two Hundred Fifty Thousand (\$250,000.00) Dollars (the "Fund") to fund implementation of a Green Beaches, Clean Beaches Media Disk Recovery Program (the "Program"), which supports beach clean-up related to the media disk releases. The Fund will be used to reimburse eligible applicants 5% of said applicant's documented clean-up costs, if any, related to the Violations, all as more fully set forth in the annexed Amendment. The Program is retroactive to June 1, 2011 and expires on October 31, 2013 and any funds remaining, including any accrued interest, will revert to the County.

It should be noted that the Board of Legislators authorized the proposed amendment to the Consent Order under Act No. 121-2012.

The goal and objective of the proposed amendment is to adjust the County's obligations under the 2008 BNR Consent Order. The Department will continuously monitor the County's progress under the Consent Order. Based on the importance of this project to the County, approval of the attached amendment is respectfully recommended.

TJL/dm  
Attachment

RESOLUTION

UPON A COMMUNICATION FROM THE COMMISSIONER OF ENVIRONMENTAL FACILITIES, BE IT HEREBY

RESOLVED: that the County of Westchester (“County”) is hereby authorized to enter into an amendment (the “Amendment”) to Consent Order Case No. CO 3-20080730-65 regarding certain mandated biological nutrient removal (“BNR”) obligations (the “2008 BNR Consent Order”) executed by the New York State Department of Environmental Conservation on December 30, 2008, in order to adjust the County’s obligations thereunder by extending certain interim deadlines, including a related fine, and funding a beach clean-up program, all as more fully set forth in the amended Consent Order; and be it further

RESOLVED: that the County Executive or his authorized designee, including without limitation, the Commissioner of Environmental Facilities, be and hereby is authorized to execute any and all documents necessary and appropriate to effectuate purposes hereof, and be it further

RESOLVED: that this resolution take effect immediately.

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
322	60	SLI01 00 C	6370		\$37,500
322	60	SLI01 01 S	6370		\$250,000

Budget Funding Year(s)   2012 -2013   Start Date   7/1/13   End Date   12/31/13    
 (must match resolution)

Funding Source Tax Dollars   \$287,500  

State Aid                   

  \$ 287,500   Federal Aid                   

(must match resolution)

Other           

APPROVED BOARD OF ACQUISITION & CONTRACT ADMINISTRATION - SOMERBY WEIRA, SECRETARY