

30620

DATE: November 19, 2012

TO: Honorable Members of the
Board of Acquisition and Contract

FROM: Robert F. Meehan
County Attorney

Thomas P. Lauro, P.E.
Commissioner of Environmental Facilities

SUBJECT: Resolution authorizing the County of Westchester ("County") to enter into an Order on Consent with the State of New York Department of Environmental Conservation ("DEC") in connection with alleged Title V violations at the Yonkers Joint Wastewater Treatment Plant

Authority of your Honorable Board is requested for the County of Westchester (the "County") acting by and through its Department of Law to enter into the attached Order on Consent to settle administrative claims of the New York State Department of Environmental Conservation ("DEC") concerning the alleged violations (DEC Case Nos.: R3-20100806-63 and R3-20110223-40) of the Title V Permit issued to the County for the Yonkers Joint Wastewater Treatment Plant ("Plant"). Act 138-2012, which authorized the County Attorney and the Commissioner of Environmental Facilities, or their designees, to settle the claims and execute all documents required to effect the settlement including the Order on Consent, was adopted by the County Board of Legislators on October 15, 2012 and approved by the County Executive on October 24, 2012.

DEC alleges that the County violated the terms and conditions of its Permit in taking one of the three permitted flares off-line and operating a fourth non-permitted flare. DEC also alleges that the County exceeded the allowable NO_x (nitric oxide and nitrogen dioxide) emissions for two of the engines at the Plant.

As a result of extensive negotiations with the DEC, an agreement was reached that, among other things, requires the County to comply with the national ambient air quality

standards (“NAAQS”) and NOx RACT emission limits for NOx¹, as specified in its variance. The County was also required to cease operation of the fourth flare until it obtained a permit modification. The County has obtained the modification and the operation of the fourth flare will also be covered in the Title V permit renewal.

The Consent Order sets forth a specific compliance schedule for the two internal combustion engines (“ICEs”) at the Plant. The Consent Order also imposes a fine in the amount of \$73,000, with \$25,000 payable upon signing the Consent Order and \$48,000 suspended, providing the County timely completes the corrective actions set forth in the Order on Consent.

The proposed Order on Consent will serve a public purpose by allowing the County to settle this matter without litigation or hearing, and the Commissioner of Environmental Facilities has determined that it is in the best fiscal and environmental interest of the County. Moreover, the failure to enter into an Order on Consent would subject the County to exorbitant fines as the assessment of daily penalties.

The goals and objectives of the Order are set forth in the schedule of compliance activities in the proposed Order on Consent. Compliance will be tracked and monitored by the staff of the Department of Environmental Facilities.

Accordingly, we recommend approval of the Order on Consent by the adoption of the annexed Resolution.

RFM/TPL/cfa

¹ NOx RACT emission limits for NOx are the “reasonably available control technology” emission limits or the lowest emission limitation of NOx that can be achieved by the application of control technology that is reasonably available considering technological and economic feasibility.

RESOLUTION

Upon the Communication of the County Attorney and the Commissioner of Environmental Facilities, it is hereby

RESOLVED, that the County of Westchester be, and hereby is, authorized to enter into the Order on Consent with the New York State Department of Environmental Conservation (“DEC”) in settlement of outstanding administrative claims of the DEC concerning alleged violations (DEC Case Nos.: R3-20100806-63 and R3-20110223-40) of the Title V Permit issued to the County for the Yonkers Joint Wastewater Treatment Plant; and be it further

RESOLVED, that the County Attorney, or his designee, and the Commissioner of the County Department of Environmental Facilities, or his designee, are authorized to execute any documents and take any actions necessary and desirable to accomplish the purposes hereof.

Account to be Charged/Credited

| Fund | Dept | Major Program, Program & Phase Or Unit | Object/ Sub-Object | Trust Account | Dollars |
|------|------|--|--------------------|---------------|----------|
| 221 | 60 | 0110:0141 | 5115 | | \$73,000 |
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Budget Funding Year 2012 Start Date: 1/1/2012 End Date: 12/31/2012
 (must match resolution)

Funding Source Tax Dollars \$73,000
 State Aid _____
\$73,000 Federal Aid _____
 (must match resolution) Other _____