

RESOLUTION NO. 2016- 244

A RESOLUTION AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT BY AND BETWEEN THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE CITY OF VINELAND.

WHEREAS, Vineland Municipal Electric Utility (VMEU) has a permit from the New Jersey Department of Environmental Protection (NJDEP) covering the operation of all sources of air pollution at VMEU's Down Station, the most significant of which is the Unit 11 combustion turbine, which has very low air permit limits, based on its state-of-the-art emission controls; and

WHEREAS, those controls perform very well, and emissions are usually extremely low and below these limits, but any problems occurring with the turbine or control equipment, even minor problems, can cause an exceedance of these low technologically-based limits, and equipment problems do sometimes occur; and

WHEREAS, summary reports on the emissions recorded by the continuous emission monitors are submitted quarterly to the NJDEP; and

WHEREAS, from 2013 to 2015 some emission exceedances, usually caused by very brief equipment problems, have been periodically reported; and

WHEREAS, the NJDEP has recently concluded an evaluation of these summary reports, as well as individual incident reports submitted by the utility explaining the circumstances surrounding the exceedances; and

WHEREAS, the NJDEP has assessed penalties for certain of these exceedances and has issued a proposed settlement regarding these alleged violations and penalty assessments; and

WHEREAS, the NJDEP has offered a settlement with an overall 25% penalty reduction from the initially calculated \$50,400 to **\$37,800**; and

WHEREAS, the City Council of the City of Vineland deems it in the best interest of the City to settle this matter rather than proceed on to costly litigation and expenses.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Vineland that the Mayor of the City of Vineland is hereby authorized to execute on behalf of the City of Vineland a Settlement Agreement in the form attached hereto.

BE IT FURTHER RESOLVED, that the City of Vineland shall pay the sum of \$37,800 to the New Jersey Department of Environmental Protection in full settlement of the penalty assessed.

Adopted:

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President of Council

ATTEST:

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City Clerk



## Memorandum

**To:** Mayor Ruben Bermudez  
Bob Dickenson, Asst. Business Administrator

**CC:** Joseph Isabella, Director, Electric Utility  
Richard P. Tonetta, Esq, City Solicitor

**From:** Lisa Fleming, Sup. Environmental Health Specialist – Electric Utility *LF*

**Date:** July 8, 2016

**Re:** DEP Settlement Agreement - NEA160002-75507  
alleged air permit violations – Unit 11 turbine, June 2013 to December 2015

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The electric utility has an air operating permit from the NJDEP covering the operation of all sources of air pollution at VMEU's Down Station, the most significant of which is the Unit 11 combustion turbine which was installed in 2012.<sup>1</sup> Since it is a new source, the Unit 11 turbine has very low air permit limits, based on its state-of-the-art emission controls. Those controls perform very well, and emissions are usually extremely low and below these limits, but any problems occurring with the turbine or control equipment, even minor problems, can cause an exceedance of these low technologically-based limits, and equipment problems do sometimes occur.<sup>2</sup>

<sup>3</sup> Emissions from the Unit 11 turbine are monitored by continuous emission monitors. Summary reports on the emissions recorded by these monitors are submitted quarterly to the NJDEP. From 2013 to 2015, some emission exceedances, usually caused by very brief equipment problems, have been periodically reported.<sup>3</sup> (Exceedances of each parameter occurred in less than 2% of operating time.)

<sup>4</sup> DEP has recently concluded an evaluation of these summary reports, as well as individual incident reports submitted by the utility to explain the circumstances surrounding the exceedances. Affirmative defenses have been granted for over half of the reported exceedances, based on the incident reports, and associated penalties have been waived in these cases. DEP has, however, assessed penalties for certain of the other exceedances. On July 1, VMEU received a proposed settlement from the DEP regional enforcement section regarding these alleged violations and penalty assessments. (See attached.) The compiled exceedances span three years.

The air pollution regulations contain a standard schedule of fines for incidents identified by continuous monitoring, and these are the basis of the DEP penalty assessments. In further consideration of all circumstances, however, DEP has offered a settlement with an overall 25% penalty reduction. In the agreement, the utility does not admit liability, and the penalty has been reduced from the initially calculated \$50,400 to \$37,800. Because further litigation would likely cost more than any reduction that might be realized through an appeal process (and an appeal might instead result in assessment of a greater penalty), it is recommended that the proposed settlement agreement be approved and signed by the mayor, and the proposed reduced penalty paid.

We are requesting that a resolution authorizing execution of this Settlement Agreement be added to the City Council agenda for July 26, 2016.

If you have any questions about the settlement or facts of the matter, please feel free to call me (x4163).  
Thanks.

DEP Settlement Agreement for alleged air permit violations  
 Unit 11 - 2013 to 2015  
 July 8, 2016

A brief summary of the citations covered by the agreement, as described by the three-hour average gas concentrations of nitrogen oxides (NO<sub>x</sub>) and carbon monoxide (CO) during the exceeding hours, is as follows:

Month	Permit limit (ppm)	Reading (ppm)	Duration
<b>NO<sub>x</sub></b>			
August 2013	2.5	4.2	3 hr.
October 2013	2.5	2.6	1 hr.
December 2013	2.5	3.3	1 hr.
	2.5	2.6	1 hr.
February 2014 *	2.5	2.7	1 hr.
	2.5	10.6	2 hr.
	2.5	9.8	1 hr.
	2.5	2.8	1 hr.
March 2014	2.5	2.6	3 hr.
July 2014	2.5	2.9	1 hr.
September 2014	2.5	2.8	1 hr.
	2.5	3.4	1 hr.
November 2014	2.5	5.6	1 hr.
January 2015	2.5	3.5	2 hr.
February 2015	2.5	2.6	1 hr.
July 2015	2.5	2.6	3 hr.
<b>CO **</b>			
October 2015	5	5.1	4 hr.
November 2015	5	5.2	10 hr.
December 2015	5	5.4	3 hr.

\* Extremely cold weather caused freezing in the water injection system.

\*\* CO exceedances were due to faulty process monitor, identified in December.

# DRAFT

Division of Air Enforcement  
Bureau of Air Compliance & Enforcement- Southern  
2 Riverside Drive, Suite 201  
Camden, NJ 08103  
Telephone: (856) 614-3601 Fax: (856) 614-3613

IN THE MATTER OF  
VINELAND CITY MUNICIPAL ELECTRIC  
UTILITY  
Po Box 1508  
Vineland, NJ 08362-1508

## SETTLEMENT AGREEMENT

EA ID # NEA160002 - 75507

1. This Settlement Agreement is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("Department") by N.J.S.A. 13:1D-1 et seq., and the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. (the "Act"), and duly delegated to the Director, Division of Air Enforcement, Bureau of Air Compliance & Enforcement- Southern pursuant to N.J.S.A.13:1B-4.
2. You are hereby NOTIFIED that during a compliance evaluation of the above location on January 01, 2014, January 01, 2015, July 01, 2013, July 01, 2014, July 01, 2015, October 01, 2013, October 01, 2014, AND October 01, 2015, the following violation(s) of the Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.) and the Air Pollution Control regulations (N.J.A.C. 7:27-1 et seq.) were observed. This violation(s) shall be recorded as part of the permanent enforcement history of VINELAND CITY MUNICIPAL ELECTRIC UTILITY at the above location and will be considered as an offense for future penalty determinations.

- A. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NOx (Total)  $\leq$  2.5 ppmvd @ 15% O<sub>2</sub>.

Description of Noncompliance: During the third quarter 2013, on August 13, you exceeded the allowable NOx emission limit of  $\leq$  2.5 ppmvd @ 15% O<sub>2</sub> on Unit 11 in violation of Operating Permit BOP130001-75507, Subject Item U11 - OS1 - Reference #5 L.

- B. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NOx (Total)  $\leq$  0.01 lb/MMBTU. Based on method 19 calculations and a NOx concentration of 2.5 ppm.

Description of Noncompliance: During the third quarter of 2013, on August 13, you exceeded the allowable NOx emission limit of  $\leq$  0.01 lb/MMBTU on Unit 11 in violation of Operating Permit BOP130001-75507, Subject Item U11 - OS1 - Reference #7 L.

- C. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NOx (Total)  $\leq$  5.4 lb/hr.

Description of Noncompliance: During the third quarter of 2013, on August 13, you exceeded the allowable NOx emission limit of  $\leq$  5.4 lb/hr on Unit 11 in violation of Operating Permit BOP130001-75507, Subject Item U11 - OS1 - Reference #9 L.

- D. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NOx (Total)  $\leq$  2.5 ppmvd @ 15% O<sub>2</sub>.

Description of Noncompliance: During the fourth quarter 2013, on October 24 and December 14, 17 you exceeded the allowable NOx emission limit of  $\leq$  2.5 ppmvd @ 15% O<sub>2</sub> on Unit 11 in violation of Operating Permit BOP130001-75507, Subject Item U11, Reference #5 L.

- E. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NOx (Total)  $\leq$  5.4 lb/hr.

Description of Noncompliance: During the fourth quarter of 2013, on December 14, you exceeded the allowable NOx emission limit of  $\leq$  5.4 lb/hr on Unit 11 in violation of Operating Permit BOP130001-75507, Subject Item U11 - OS1 - Reference #9 L.

- F. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NOx (Total)  $\leq$  2.5 ppmvd @ 15% O<sub>2</sub>.

Description of Noncompliance: During the first quarter 2014, on February 3, 11, 26 and March 3, you exceeded the allowable NOx emission limit of  $\leq$  2.5 ppmvd

@ 15% O<sub>2</sub> on Unit 11 in violation of Operating Permit BOP130001-75507, Subject Item U11, Reference #5 L.

- G. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NO<sub>x</sub> (Total) ≤ 5.4 lb/hr.

Description of Noncompliance: During the first quarter of 2014, on February 3, 11 and 26 you exceeded the allowable NO<sub>x</sub> emission limit of ≤ 5.4 lb/hr on Unit 11 in violation of Operating Permit BOP130001-75507, Subject Item U11 - OS1 - Reference #9 L.

- H. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NO<sub>x</sub> (Total) ≤ 2.5 ppmvd @ 15% O<sub>2</sub>.

Description of Noncompliance: During the third quarter 2014, on July 21, September 8 and 22, you exceeded the allowable NO<sub>x</sub> emission limit of ≤ 2.5 ppmvd @ 15% O<sub>2</sub> on Unit 11 in violation of Operating Permit BOP090001-75507, Subject Item U11, Reference #5 L.

- I. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NO<sub>x</sub> (Total) ≤ 5.4 lb/hr.

Description of Noncompliance: During the third quarter 2015, on July 13 and September 1, you exceeded the allowable NO<sub>x</sub> emission limit of ≤ 5.4 lb/hr. on Unit 11 in violation of Operating Permit BOP140003-75507, Subject Item U11 - OS1 - Reference #9 L.

- J. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NO<sub>x</sub> (Total) ≤ 2.5 ppmvd @ 15% O<sub>2</sub>.

Description of Noncompliance: During the fourth quarter 2014, on November 8, you exceeded the allowable NO<sub>x</sub> emission limit of ≤ 2.5 ppmvd @ 15% O<sub>2</sub> on Unit 11 in violation of Operating Permit BOP140001-75507, Subject Item U11, Reference #5 L.

- K. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NO<sub>x</sub> (Total) ≤ 5.4 lb/hr.

Description of Noncompliance: During the fourth quarter 2014, on November 8 you exceeded the allowable NO<sub>x</sub> emission limit of ≤ 5.4 lb/hr. on Unit 11 in

violation of Operating Permit BOP140003-75507, Subject Item U11 - OS1 - Reference #9 L.

- L. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NO<sub>x</sub> (Total) ≤ 2.5 ppmvd @ 15% O<sub>2</sub>.

Description of Noncompliance: During the first quarter 2015, on January 8, February 16, you exceeded the allowable NO<sub>x</sub> emission limit of ≤ 2.5 ppmvd @ 15% O<sub>2</sub> on Unit 11 in violation of Operating Permits BOP140001 and 140003-75507, Subject Item U11, Reference #5 L.

- M. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NO<sub>x</sub> (Total) ≤ 0.01 lb/MMBTU. Based on method 19 calculations and a NO<sub>x</sub> concentration of 2.5 ppm.

Description of Noncompliance: During the first quarter 2015, on January 7, you exceeded the allowable NO<sub>x</sub> emission limit of ≤ 0.01 lb/mmbtu on Unit 11 in violation of Operating Permit BOP140001-75507, Subject Item U11, Reference #7 L.

- N. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), CO ≤ 5 ppmvd @ 15% O<sub>2</sub>.

Description of Noncompliance: During the fourth quarter 2015, on October 5 and 18, November 2, 3, 9, 15, and 30, December 3, you exceeded the allowable CO emission limit of ≤ 5 ppmvd @ 15% O<sub>2</sub> on Unit 11 in violation of Operating Permit BOP140002-75507, Subject Item U11, Reference #11 L.

- O. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), CO ≤ 6.4 lb/hr.

Description of Noncompliance: During the fourth quarter 2015, on November 5, 9 and 30 and December 3, you exceeded the allowable CO emission limit of ≤ 6.4 lb/hr on Unit 11 in violation of Operating Permit BOP140002-75507, Subject Item U11, Reference #15.L.

- P. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NO<sub>x</sub> (Total) ≤ 2.5 ppmvd @ 15% O<sub>2</sub>.

Description of Noncompliance: During the third quarter 2015, on July 13, September 1 and 7, you exceeded the allowable NO<sub>x</sub> emission limit of ≤ 2.5

ppmvd @ 15% O2 on Unit 11 in violation of Operating Permit BOP140003-75507, Subject Item U11 - OS1 - Reference #5 L.

Q. Requirement: Pursuant to N.J.A.C. 7:27-22.16(a), NOx (Total)  $\leq$  5.4 lb/hr.

Description of Noncompliance: During the third quarter 2014, on July 21, September 8 and 22, you exceeded the allowable NOx emission limit of  $\leq$  5.4 lb/hr on Unit 11 in violation of Operating Permit BOP090001-75507, Subject Item U11, Reference #9L.

3. Therefore, the Department has determined that VINELAND CITY MUNICIPAL ELECTRIC UTILITY is liable for civil administrative penalties totaling \$50,400.00 for the above referenced violations pursuant to N.J.S.A. 26:2C-19 and N.J.A.C. 7:27A-3.1 et seq..
4. The Department and VINELAND CITY MUNICIPAL ELECTRIC UTILITY had telephone conversations on both May 12 & June 21, 2016 and have agreed to settle this matter in accordance with the following terms:
  - a. The Department has determined that the above violation(s) has been corrected and thus is willing to accept a reduced penalty as follows. VINELAND CITY MUNICIPAL ELECTRIC UTILITY agrees to operate in compliance with all applicable regulations and permits.
  - b. In full settlement of the aforementioned violation(s) VINELAND CITY MUNICIPAL ELECTRIC UTILITY shall pay a penalty of \$37,800.00 by check made payable to "Treasurer, State of New Jersey" and remit to the Division of Revenue at the address stated on the enclosed invoice within thirty (30) calendar days from the date of full execution of this Settlement Agreement.
  - c. Neither the entry into this Settlement Agreement nor the payment of the settlement amount shall constitute admission of liability by VINELAND CITY MUNICIPAL ELECTRIC UTILITY for the violations listed herein.
  - d. If VINELAND CITY MUNICIPAL ELECTRIC UTILITY fails to pay the above reduced penalty in accordance with the terms and conditions of this Settlement Agreement, then VINELAND CITY MUNICIPAL ELECTRIC UTILITY is liable for the full penalty amount. The full penalty amount will be included in a formal



enforcement action that will also include formal withdrawal of this settlement agreement.

- e. If VINELAND CITY MUNICIPAL ELECTRIC UTILITY fails to pay the above reduced penalty in accordance with the terms and conditions of this Settlement Agreement, then VINELAND CITY MUNICIPAL ELECTRIC UTILITY is liable for the full penalty amount. The full penalty amount will be included in a formal enforcement action that will also include formal withdrawal of this settlement agreement.
- f. Nothing in this Settlement Agreement shall preclude the Department from taking enforcement action against VINELAND CITY MUNICIPAL ELECTRIC UTILITY for violations not set forth in this Settlement Agreement.
- g. VINELAND CITY MUNICIPAL ELECTRIC UTILITY hereby waives its right to an administrative hearing with respect to the violation(s) which are listed in paragraph 2 above.
- h. This Settlement Agreement shall be effective upon execution by both parties. The Department does not waive its right to consider any violations set forth above as an offense in determining penalties in any future enforcement action.

NJ Department of Environmental Protection

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

Richelle Wormley, Manager  
Bureau of Air Compliance & Enforcement-  
Southern

VINELAND CITY MUNICIPAL  
ELECTRIC UTILITY

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

Mr. Ruben Bermudez, City of Vineland  
Mayor