

CITY OF VINELAND

RESOLUTION NO. 2014- 94

A RESOLUTION AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT REGARDING ALLEGED VIOLATION OF THE VINELAND MUNICIPAL ELECTRIC UTILITY AIR OPERATING PERMIT FOR HOWARD M. DOWN GENERATING STATION – FACILITY PI NO. 75507

**WHEREAS**, the Vineland Municipal Electric Utility (VMEU) has had a facility air operating permit (Facility PI No. 75507), issued by the New Jersey Department of Environmental Protection (NJDEP); in effect for the Howard M. Down Generating Station (Down Station) since 2005, and

**WHEREAS**, the NJDEP alleges that several incidents involving emissions in excess of applicable carbon monoxide (CO) permit limits, and technical deficiencies in continuous monitoring quality assurance, occurred between 2006 and 2012 with regard to Down Station Unit 10; and

**WHEREAS**, the NJDEP also alleges that several incidents involving emissions in excess of applicable carbon monoxide (CO) permit limits occurred in June 2012 and March 2013 with regard to Down Station Unit 11; and

**WHEREAS**, the NJDEP is satisfied that no violations as alleged presently exist, has offered to settle these permit deviations for a penalty of \$5,600.00 under the terms of a proposed Settlement Agreement, EA ID# NEA140001-75507, sent to VMEU with a letter dated January 24, 2014, and

**WHEREAS**, the City would not admit liability for these alleged violations under the terms of the proposed Settlement Agreement, and it is in the best interest of the City to accept this settlement offer, execute the Settlement Agreement, and pay the prescribed penalty,

**NOW, THEREFORE**, BE IT RESOLVED by the City Council of the City of Vineland as follows:

1. The Mayor is authorized to execute the Settlement Agreement EA ID# NEA140001 – 75507 proposed by the NJDEP, and
2. The sum of \$5,600.00 is authorized to be paid in full settlement of this matter and remitted to the State of New Jersey Division of Revenue within thirty (30) days following full execution of the Settlement Agreement.

Adopted:

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President of Council

ATTEST:

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City Clerk



## Memorandum

**To:** Mayor Ruben Bermudez  
 William Lutz, Business Administrator ✓

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

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

**Date:** February 5, 2014

**Re:** DEP Settlement Agreement - PI#75507-NEA140001  
 miscellaneous alleged air permit violations – 2006 to 2012  
 Unit 10 boiler / Unit 11 turbine



Since August 2005, the electric utility has had an air operating permit from the NJDEP covering the operation of all sources of air pollution at VMEU's Down Station. Up until 2012, this permit primarily covered the boilers in the main plant. In 2012, the Unit 11 combustion turbine was added, and Unit 11 is now the only major source at the facility.

All of the major sources at the station have had continuous emission monitors since 1995. Reports on the emissions recorded by these monitors, as well as reports on third party annual stack tests, have been submitted regularly, as required, to the NJDEP. Over the years, some emission exceedances, usually caused by equipment problems, have been periodically reported.

Although most past violations from the boilers have already been evaluated and either granted an affirmative defense by, or resulted in penalties paid to, the NJDEP, DEP recently did a final evaluation of outstanding reported exceedances from the boilers (since the last boiler was retired in September 2012) and found that there were still several open incidents in the DEP database. In conducting its review, DEP also noted that there was a series of exceedances reported for the Unit 11 turbine in the first quarter of 2013 which had not yet been settled. On January 27 VMEU received a notice from the DEP regarding these alleged violations. A brief summary of the citations is as follows:

2006 - Failure to conduct PM-10 stack tests on the Unit 10 boiler during the calendar year.

VMEU had conducted an annual Unit 10 stack test for many parameters in August, 2006, and had arranged for the PM-10 test to be performed at this time. When the testing firm attempted to do this, however, it was found that the ports in the stack were not big enough for this newly required test. New ports were installed as quickly as possible, but another test could not be arranged until January 2007, which was after the calendar year had passed. DEP has indicated that they consider this a violation, even though the test was completed.

January 2009 stack test - CO emission violations due to coal feeder jam

During the first run of the annual stack test performed in 2009, wet coal entering the feeders of the Unit 10 boiler caused a brief interruption of fuel flow, which had a negative effect on CO emissions, as combustion was not ideal. The disturbance was

DEP Settlement Agreement - miscellaneous alleged air permit violations – 2006 to 2012  
February 5, 2014

brief, but caused the hourly emissions to exceed permit limits. To establish a good test, three additional runs were made, and were in complete compliance, but the first run still had to be reported. Although VMEU filed an affirmative defense for the incident, it was not accepted by DEP, and the exceedance has been cited as a violation.

2010 – 2011 technical problems with portions of the continuous monitoring systems on the Unit 10 boiler resulted in a failure to meet minimum valid data capture requirements.

June 30, 2012 CO emission exceedance during one hour.

A slight CO exceedance occurred during start-up that was not initially noticed and immediately reported for an affirmative defense due to the intense ongoing activities surrounding the 2012 Derecho storm. Although the reasons for the exceedance were ultimately explained in a report to the DEP, the timing of the report did not qualify for an affirmative defense under the guidelines in the state law.

March 2013 CO emission exceedances on three separate days

During the first year of Unit 11 combustion turbine operation, it was found that the initially installed emission control systems could not be balanced and perform adequately during all cold weather conditions. During March of 2013, emissions exceedances occurred as a result of this before the substantial equipment changes necessary to correct the problem could be made. VMEU has since worked with Rolls-Royce to replace certain components of the control systems so that this should no longer be a problem, however DEP is looking to settle these initial violations.

The NJDEP has a standard schedule of fines for incidents of this nature. In consideration of the circumstances in each case, however, DEP has offered a settlement with a reduced penalty. Attached is a copy of the proposed settlement which has been prepared by the regional NJDEP enforcement section. In the agreement, the utility does not admit liability, and the penalty has been reduced from the initially calculated \$9,400 to \$5,600. Because further litigation would likely cost much more than the penalty assessment in this proposed settlement, it is recommended that it be approved and signed by the mayor.

We are requesting that a resolution authorizing execution of this Settlement Agreement be added to the City Council agenda for February 25, 2014. (The agreement must be executed by March 13, 2014.)

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



# State of New Jersey

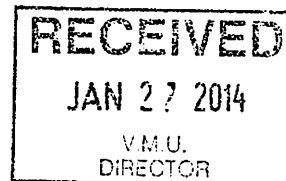
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR AND HAZARDOUS MATERIALS ENFORCEMENT  
Bureau of Air Compliance and Enforcement-Southern  
2 Riverside Drive-Suite 201, Camden, NJ 08103  
Tel: (856) 614-3601  
Fax: (856) 614-3613

CHRIS CHRISTIE  
Governor

BOB MARTIN  
Commissioner

KIM GUADAGNO  
Lt. Governor

January 24, 2014



Mr. Joseph Isabella, Director  
VINELAND CITY MUNICIPAL ELECTRIC UTILITY  
PO BOX 1508  
VINELAND, NJ, 08362-1508

Re: VINELAND MUNICIPAL ELEC UTIL HOWARD M. DOWN /75507  
New Jersey Administrative Code 7:27-22.3(e)  
Settlement Agreement with EA ID #: NEA140001


Dear Mr. Isabella:

In accordance with the agreement reached between the Department and VINELAND MUNICIPAL ELEC UTIL HOWARD M. DOWN and in conformity with subsequent telephone discussions, a Settlement Agreement regarding compliance with the referenced subchapter has been prepared for signature.

If this Settlement Agreement meets with your approval, please have a representative of VINELAND MUNICIPAL ELEC UTIL HOWARD M. DOWN execute the Settlement Agreement and return the executed document to this office within 45 days of receipt. **Note: the payment invoice will be included with the final copy of the settlement agreement after it has been fully executed by all parties.**

If you have any questions regarding this matter, please contact Mary Toogood of my staff at (856) 614-3601.

Sincerely,

  
for Mary M. Toogood  
Richelle B. Wormley, Manager  
Bureau of Air Compliance &  
Enforcement - Southern

Enclosure



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
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CHRIS CHRISTIE  
Governor

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Commissioner

KIM GUADAGNO  
Lt. Governor

IN THE MATTER OF  
VINELAND CITY MUNICIPAL  
ELECTRIC UTILITY  
PO BOX 1508  
VINELAND, NJ 08362-1508

### SETTLEMENT AGREEMENT

EA ID # NEA140001 - 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 Manager, Division of Air and Hazardous Materials Enforcement, Bureau of Air Compliance & Enforcement - Southern pursuant to N.J.S.A.13:1B-4.
2. You are hereby NOTIFIED that during compliance evaluations of the above location on 05/20/07, 10/19/11, 10/31/11, 1/3/12, 2/20/13, 4/15/13, 10/24/13 and 12/09/13, 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. These violations 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. 7:27-22.3(e) and N.J.A.C. 7:27-22.16(o), conduct stack emission testing as follows: Stack tests for the criteria pollutants (TSP and PM-10), heavy metals (As, Be, Cd, Cr, Co, Pb, Mn, Hg and Ni), and acid gases (HCl and HF) shall be conducted annually to demonstrate compliance with the emission limits. Additionally, stack test shall be conducted for all the criteria pollutants (TSP, PM-10, NOx, SO2, CO and VOC), heavy metals (As, Be, Cd, Cr, Co, Pb, Mn, Hg and Ni) and acid gases (HCl and HF), including non-metals (P & Se), total dioxins/furans and POM, within 42 months from the date of the approved Operating Permit. Emissions of the following 16 POM constituents shall be speciated and reported: naphthalene, acenaphthene, acenaphthylene, fluorene, phenanthrene, anthracene, fluoranthene, pyrene, benzo(ghi)perylene, benz(a)anthracene, chrysene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, and indeno(1,2,3-cd) pyrene. Compliance

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shall also be determined by continuous emission monitoring for CO, NO<sub>x</sub>, O<sub>2</sub>, SO<sub>2</sub> and opacity. When stack testing, three consecutive runs shall be conducted at no less than 95% load firing coal. Heat input MMBtu/hr, HHV shall be determined for each stack test.

Description of Noncompliance: You failed to comply with the conditions of Operating Permit BOP990001. Specifically, during 2006, stack emission tests for PM-10 were not conducted in violation of Operating Permit requirement U10, OS0, Reference #10. Stack emission tests for PM-10 were conducted on January 12, 2007.

- B. Requirement: Pursuant to N.J.A.C. 7:27-22.3(e) and N.J.A.C. 7:27-22.16(e), CO ≤ 7.38 lb/hr.

Description of Noncompliance: You failed to comply with the conditions of your operating permit. Specifically, carbon monoxide emissions during the January 2009 stack test on Unit #10, exceeded the permit allowable contained in BOP990001, U10, OS1, Reference #11.

Permit Limit - 7.38 lb/hr

Run 1 - 8.24 lb/hr

- C. Requirement: Pursuant to N.J.A.C. 7:27-22.3(e) and N.J.A.C. 7:27-22.16(e), CO ≤ 0.02 lb/MMBTU.

Description of Noncompliance: You failed to comply with the conditions of your operating permit. Specifically, carbon monoxide emissions during the January 2009 stack test on Unit #10, exceeded the permit allowable contained in BOP990001, U10, OS1, Reference #12.

Permit Limit - 0.02 lb/MMBtu

Run 1 - 0.027 lb/MMBtu

- D. Requirement: Pursuant to N.J.A.C. 7:27-22.3(e) and N.J.A.C. 7:27-22.16(o), other: The QA/QC coordinator shall be responsible for reviewing the QA/QC plan on an annual basis.

Description of Noncompliance: You failed to ensure that all requirements of your Operating Permit were met. Specifically, you failed to perform the required opacity audit during 2nd quarter 2010 in violation of BOP080001, U10, OS0, Ref#41.

- E. Requirement: Pursuant to N.J.A.C. 7:27-22.3(e) and N.J.A.C. 7:27-22.16(o), monitored by fuel flow/firing rate instrument continuously, based on a consecutive 365 day period (rolling 1 day basis) and heat input calculations.

Description of Noncompliance: You failed to continuously monitor fuel flow /firing rate continuously as required by permit condition BOP100003, U10 OS0 Reference #15.

- F. Requirement: Pursuant to N.J.A.C. 7:27-22.3(e) and N.J.A.C. 7:27-22.16(o), maximum Gross Heat Input: Monitored by continuous emission monitoring system continuously, based on a 1 hour block average.

Description of Noncompliance: You failed to continuously monitor heat input as required by permit condition BOP100003, U10 OS0 Reference #13.

- G. Requirement: Pursuant to N.J.A.C. 7:27-22.3(e) and N.J.A.C. 7:27-16.23, CO: Recordkeeping by data acquisition system (DAS) / electronic data storage continuously. (See Ref. #1).

Description of Noncompliance: During third quarter 2011 you exceeded the allowable downtime for the CO monitor on Unit 10. Source time for the quarter was 49 hours and monitor time was 41 hours. This reflects 16% downtime.

- H. Requirement: Pursuant to N.J.A.C. 7:27-22.3(e) and N.J.A.C. 7:27-22.16(o), NOx (Total): Recordkeeping by data acquisition system (DAS) / electronic data storage continuously or by manual logging of parameters for periods when the CMS is down, annually. The permittee shall also keep the following records, 1) Start-time and end-time of CEM not in operation. 2) Total downtime of the CEM. 3) Actual No. 6 fuel oil and No. 2 fuel oil combusted when the CEM was not in operation.

Description of Noncompliance: During third quarter 2011 you exceeded the allowable downtime for the NOx monitor on Unit 10. Source time for the quarter was 49 hours and monitor time was 41 hours. This reflects 16% downtime.

- I. Requirement: Pursuant to N.J.A.C. 7:27-22.3(e) and N.J.A.C. 7:27-22.16(a), CO  $\leq$  5 ppmvd @ 15% O<sub>2</sub>. Based on vendor guarantee.

Description of Noncompliance: During second quarter 2012, on June 30, you exceeded the allowable CO limit of  $\leq$  5 ppmvd @ 15% oxygen on Unit 11 in violation of Operating Permit BOP110001-75507, Subject Item U11, Reference #11.L.

- J. Requirement: Pursuant to N.J.A.C. 7:27-22.3(e) and N.J.A.C. 7:27-22.16(a), CO  $\leq$  6.4 lb/hr. Based on vendor guarantee.

Description of Noncompliance: During second quarter 2012, on June 30, you exceeded the allowable CO pound per hour limit of  $\leq$  6.4 on Unit 11 in violation of Operating Permit BOP110001-75507, Subject Item U11, Reference #16.L.

VINELAND CITY MUNICIPAL ELECTRIC UTILITY  
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K. Requirement: Pursuant to N.J.A.C. 7:27-22.3(e), a permittee shall ensure that all requirements of the operating permit are met.

Description of Noncompliance: During the first quarter 2013, on March 18, you exceeded the allowable CO emission limit of  $\leq 6.4$  lb/hr on Unit 11 in violation of Operating Permit BOP120002-75507, Subject Item U11, Reference #15.L.

L. Requirement: Pursuant to N.J.A.C. 7:27-22.3(e), a permittee shall ensure that all requirements of the operating permit are met.

Description of Noncompliance: During the first quarter 2013, on March 18, 21 and 22, you exceeded the allowable CO emission limit of  $\leq 5$  ppmvd @ 15% O<sub>2</sub> on Unit 11 in violation of Operating Permit BOP120002-75507, Subject Item U11, Reference #11.L.

3. Therefore, the Department has determined that the VINELAND CITY MUNICIPAL ELECTRIC UTILITY is liable for civil administrative penalties totaling \$9,400.00 for the above referenced violation(s) 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 have agreed to settle this matter in accordance with the following terms:
  - a. The Department has determined that the above violations 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 \$5,600.00 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 an 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.



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- e. 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.
- f. 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.
- g. Nothing in this Settlement Agreement restricts the ability of the Department to raise the above findings in any other proceeding, specifically including, but not limited to, proceedings pursuant to N.J.S.A. 13:1E-126 et seq., (commonly referred to as A-901).
- 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.

VINELAND CITY MUNICIPAL ELECTRIC UTILITY  
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NJ Department of Environmental Protection

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

BY: \_\_\_\_\_  
Richelle B. Wormley, Manager  
Bureau of Air Compliance & Enforcement-  
Southern

VINELAND CITY MUNICIPAL  
ELECTRIC UTILITY

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

BY: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Title

**AIR COMPLIANCE AND ENFORCEMENT  
 PENALTY CALCULATION SHEET  
 N.J.A.C. 7:27A-1**

**Responsible Organization:** VINELAND MUNICIPAL ELEC UTIL HOWARD M. DOWN

**ID #:** 75507

**Program Interest:** VINELAND MUNICIPAL ELEC UTIL HOWARD M. DOWN

CITATION	VIOLATION	CLASS	OFFENSE	POLLUTANT	RATE	PENALTY
N.J.A.C. 7:27-22.18(e)2	Failure to conduct PM-10 stack tests on U10 during 2006. (TST060002)		1	PM-10		\$2,000.00
N.J.A.C. 7:27-22.3(e)	CO emission violations during Jan 2009 stack emission tests on U10. (TST080003)	2 (<25% BOP allowable)	1	CO	7.38 lb/hr	\$2,000.00
N.J.A.C. 7:27-22.3(e)	Failure to monitor heat input U10, fuel flow/firing rate on 6/7,22/11 on U10. (SUB110009)		1			\$400.00
N.J.A.C. 7:27-22.3(e)	Excessive monitor downtime for NOx & CO monitors on U10 during 3rd Q 2011 (SUB110010)		1	NOx/CO		\$400.00
N.J.A.C. 7:27-22.3(e)	Failure to conduct opacity audit on U10 opacity monitor during 2nd Q 2010 (SUB110004)		1	Opacity		\$1,000.00
N.J.A.C. 7:27-22.3(e)	CO emission violations on 3/18, 21,22/13 on U11 (SUB130004)			CO		\$3,200.00
N.J.A.C. 7:27-22.3(e)	CO emission violations on 6/30/12 on U11 (SUB120006/SUB130003)			CO		\$400.00
				<b>TOTAL PENALTY</b>		<b>\$9,400.00</b>

SIGNATURE OF INSPECTOR Mary Jorgard

DATE 01/23/2014

Should economic benefit be evaluated: Yes- No-