

RESOLUTION NO. 2017-223

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, the Howard M. Down and West Generating Stations of the Vineland Municipal Electric Utility have plans approved by the New Jersey Department of Environmental Protection (NJDEP) which address compliance with the New Jersey Discharge Prevention (DPCC) regulations; and

WHEREAS, the goal of these regulations is to prevent major oil spills; and

WHEREAS, on February 27 and March 2, 2017, an NJDEP inspector and plan review specialist from the Bureau of Release Prevention visited the above stations to evaluate current facility compliance with the DPCC regulations and found that the required daily inspections had been missed on several weekend days over the past year, that a couple of areas at the plant had been missed during other daily inspections, and that spill control supplies had not been inventoried in every quarter of the past year, as required; and

WHEREAS, the deviations from the requirements have been identified and a penalty in the amount of \$3,000.00 has been assessed and proposed in the attached Administrative Consent Order (ACO); and

WHEREAS, it is deemed to be in the best interest of the City to settle this matter and it is recommended by the Municipal Electric Utility that the ACO be approved;

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 \$3,000 to the New Jersey Department of Environmental Protection in full settlement of the penalty assessed.

Adopted:

President of Council

ATTEST:

City Clerk

Memorandum



To: Mayor Anthony Fanucci
Bob Dickenson, Business Administrator

CC: John Lillie, Director, Utilities
Joseph Isabella, General Manager, Utilities
Richard P. Tonetta, Esq, City Solicitor

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

Date: May 5, 2017

Re: DEP proposed Administrative Consent Order - NEA1170001-061400865000
alleged violations of the oil discharge prevention regulations
Down and West Stations, March 2017

Both Howard M. Down and West Generating Stations have plans approved by the NJDEP which address compliance with the NJ Discharge Prevention regulations (DPCC). The goal of these regulations is to prevent major oil spills. There are many requirements that apply to the generating stations, including ones related to equipment and containment structures, inspections, training, drills and records.

On February 27 and March 2, 2017, an NJDEP inspector and plan review specialist from the Bureau of Release Prevention visited Down and West Stations to evaluate current facility compliance with the DPCC regulations. Although VMEU demonstrated that it was meeting the vast majority of the applicable requirements, there were several issues that were noted by the inspector where compliance was not totally complete. Specifically, it was found that required daily inspections had been missed on several weekend days over the past year, that a couple of areas at the plant had been missed during other daily inspections, and that spill control supplies had not been inventoried in every quarter of the past year, as required.

These deviations from the requirements have been identified in a proposed Administrative Consent Order (ACO), a copy of which is attached. Under the ACO, a penalty of \$3,000 is proposed.

This penalty is reduced from the initial level indicated in the rule for these conditions, based on the inspector's evaluation that VMEU's performance is generally very good, and that there were extenuating circumstances related to the situations cited. Since these consideration have been given in setting the penalty, and because further legal appeals would be costly, it is recommended that the ACO be approved by City Council, allowing the Mayor to sign and the provisions to be executed.

We are requesting that a resolution authorizing execution of this Settlement Agreement be added to the next City Council agenda.

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

A handwritten signature in blue ink that reads "Lisa C. Fleming".

A handwritten mark or signature in blue ink, possibly initials, located at the bottom right of the page.



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF RELEASE PREVENTION
P.O. Box 420, Mail Code 22-03D
401 East State Street
Trenton, New Jersey 08625-0420
TELEPHONE (609) 633-0610 FAX (609) 633-7031

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

CERTIFIED MAIL
7014 2870 0001 5691 7037

April 27, 2017

The Honorable Anthony Fanucci
Mayor
Vineland Electric Utility
P.O. Box 1508
Vineland, NJ 08362-1508

RE: VINELAND ELECTRIC UTILITY - DOWN STATION
Draft Administrative Consent Order (ACO)
EA ID #: NEA170001 - 061400865000

Dear Mayor Fanucci:

In accordance with the agreement reached between the Department and VINELAND ELECTRIC UTILITY - DOWN STATION, enclosed is the Draft Administrative Consent Order (ACO).

If this draft ACO meets with your approval, please execute it and return the executed document to this office within 15 days of receipt. If you wish to discuss any changes to the draft ACO, within 15 days of receipt contact Christopher Lucien, at (609) 633-1130 or by letter at the address above. **Note: the payment invoice will be included with the final copy of the ACO after it has been fully executed by all parties.**

If you have any questions about this process, please contact Christopher Lucien, as indicated above.

Sincerely,

Iclal Atay, Ph.D., Chief
Bureau of Release Prevention

Enclosure

c: Christopher Lucien





State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF RELEASE PREVENTION
P.O. Box 420, Mail Code 22-03D
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Lt. Governor

BOB MARTIN
Commissioner

CERTIFIED MAIL
7014 2870 0001 5691 7037

IN THE MATTER OF

ADMINISTRATIVE
CONSENT ORDER

VINELAND ELECTRIC UTILITY - DOWN STATION
P.O. Box 1508
Vineland, NJ 08362-1508

EA ID # NEA170001 - 061400865000

This Administrative Consent Order (ACO) is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter NJDEP or the Department) by N.J.S.A. 13:1D-1 *et seq.*, and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a *et seq.*, the Transportation of Hazardous Liquids Act, N.J.S.A. 58:10-46 *et seq.*, and the Industrial Establishments Act, N.J.S.A. 13:1K-15 *et seq.* (the Act), and duly delegated to the Chief, Bureau of Release Prevention, pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. VINELAND ELECTRIC UTILITY - DOWN STATION owns and/or operates a facility at 211 N West Avenue, Blocks and Lots [2908, 1] [2909, 1] [2910, 1] [2916, 1] [2933, 1], Vineland City, Cumberland County, New Jersey (ID# 061400865000).
2. As the result of a compliance evaluations conducted on February 27 and March 2, 2017, the Department has determined that VINELAND ELECTRIC UTILITY - DOWN STATION failed to comply with applicable requirements as follows:

Subject: DGEN

Requirement: Pursuant to N.J.A.C. 7:1E-2.10(a)6iii, all equipment and portions of the major facility in service using hazardous substances, as well as all cleanup and

removal equipment and supplies, shall be visually inspected in accordance with standard operating procedures pursuant to N.J.A.C. 7:1E-2.14. Visual inspections shall be performed at a minimum according to the following schedule: Once quarterly: for adequacy and location, all cleanup and removal equipment and supplies.

Description of Noncompliance: You failed to inspect all cleanup and removal equipment and supplies quarterly. Quarterly inspections were not conducted in the third and fourth quarters of 2016.

Requirement: Pursuant to N.J.A.C. 7:1E-2.10(a)2, all equipment and portions of the major facility in service using hazardous substances, as well as all cleanup and removal equipment and supplies, shall be visually inspected in accordance with standard operating procedures pursuant to N.J.A.C. 7:1E-2.14. Visual inspections shall be performed at a minimum according to the following schedule: Once daily for integrity and leaks, all secondary containment systems and diversion systems for aboveground storage tanks which are not impermeable.

Description of Noncompliance: You failed to conduct a daily inspection of all secondary containment and diversion systems for aboveground storage tanks which are not impermeable. In November and December 2015, weekend inspections of this area were not being conducted/documentated.

Requirement: Pursuant to N.J.A.C. 7:1E-2.10(a)5, all equipment and portions of the major facility in service using hazardous substances, as well as all cleanup and removal equipment and supplies, shall be visually inspected in accordance with standard operating procedures pursuant to N.J.A.C. 7:1E-2.14. Visual inspections shall be performed at a minimum according to the following schedule: Once monthly for integrity and leaks, all other storage areas and secondary containment or diversion systems, and all aboveground pipes.

Description of Noncompliance: You failed to inspect storage areas and secondary containment or diversion systems, and all aboveground pipes daily as detailed in your DPCC Plan. Specifically, the Butler Building that contains drums was not inspected for a period of time in 2015.

3. Based on the facts set forth in these FINDINGS, the Department has determined that VINELAND ELECTRIC UTILITY - DOWN STATION has violated the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a *et seq.*, and/or the Transportation of Hazardous Liquids Act, N.J.S.A. 58:10-46 *et seq.*, and/or the Industrial Establishments Act, N.J.S.A. 13:1K-15 *et seq.* and the regulations promulgated pursuant thereto, specifically N.J.A.C. 7:1E-2.10(a)2, 5, and 6iii.
4. In order to resolve this matter without trial or adjudication, VINELAND ELECTRIC

UTILITY - DOWN STATION has agreed to entry of this ACO and to be bound by its terms and conditions.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

A. COMPLIANCE SCHEDULE

5. VINELAND ELECTRIC UTILITY - DOWN STATION shall take whatever actions are necessary to achieve and maintain compliance including but not limited to the following:
 - a. Submit record of visual inspections within 30 days of the effective date of this document demonstrating that cleanup and removal equipment and supplies are inspected quarterly.
 - b. Submit record of visual inspections within 30 days of the effective date of this document demonstrating that storage areas and secondary containment or diversion systems, and all aboveground pipes are inspected daily.
 - c. Submit record of visual inspections within 30 days of the effective date of this document demonstrating that a daily inspection of all secondary containment and diversion systems for aboveground storage tanks which are not impermeable is conducted daily.

B. PENALTY

6. In settlement of the violations cited in the above findings, VINELAND ELECTRIC UTILITY - DOWN STATION shall pay a penalty of \$3,000.00 by check payable to Treasurer, State of New Jersey and remitted to the Division of Revenue at the address stated on the enclosed invoice.
7. If any payment set forth in the preceding paragraph is not properly and timely received by the Division of Revenue, a default shall have occurred. If the default is not cured within five days of receipt by VINELAND ELECTRIC UTILITY - DOWN STATION of written notice of such default, the Department, in its sole discretion, may declare the entire sum of \$3,000.00, plus interest, less any payment previously made hereunder, immediately due and owing, and may take any action authorized by law or this ACO, without further notice to VINELAND ELECTRIC UTILITY - DOWN STATION.

C. STIPULATED PENALTIES

8. VINELAND ELECTRIC UTILITY - DOWN STATION shall pay stipulated penalties to the Department, as set forth below, for failure to comply with the provisions of this ACO unless the Department has notified VINELAND ELECTRIC UTILITY - DOWN STATION in writing that a stipulated penalty will not be assessed for violations of the compliance schedule of this ACO.

| <u>Calendar Days After Due Date</u> | <u>Per Calendar Day</u> |
|-------------------------------------|-------------------------|
| 1-7 | \$50 |
| 8-14 | \$100 |
| 15 or more | \$250 |

9. Within 45 calendar days after VINELAND ELECTRIC UTILITY - DOWN STATION's receipt of a written demand from the Department for stipulated penalties, VINELAND ELECTRIC UTILITY - DOWN STATION shall submit a check to the Department as outlined in paragraph 8 above.
10. If VINELAND ELECTRIC UTILITY - DOWN STATION fails to pay stipulated penalties pursuant to the preceding paragraphs, the Department may take action to collect same, including, but not limited to, instituting civil proceedings to collect such penalties pursuant to R. 4:67 and R. 4:70 or assess civil administrative penalties for violations of this ACO.
11. The payment of stipulated penalties does not alter VINELAND ELECTRIC UTILITY - DOWN STATION's responsibility to complete all requirements of this ACO.

D. GENERAL PROVISIONS

12. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding.
13. This ACO shall be binding on VINELAND ELECTRIC UTILITY - DOWN STATION, its respective agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
14. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court.
15. VINELAND ELECTRIC UTILITY - DOWN STATION agrees not to contest the terms or conditions of this ACO except that VINELAND ELECTRIC UTILITY - DOWN STATION may contest the Department's interpretation or application of such terms or conditions in any action brought by the Department to enforce this ACO's provisions.
16. This ACO shall not relieve VINELAND ELECTRIC UTILITY - DOWN STATION from

obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes, codes, rule, regulations and orders, including but not limited to the statutes and regulations cited herein.

17. No modification or waiver of this ACO shall be valid except by written amendment duly executed by VINELAND ELECTRIC UTILITY - DOWN STATION and the Department.
18. Unless otherwise specifically provided herein, VINELAND ELECTRIC UTILITY - DOWN STATION shall submit all documents required by this ACO, except penalty payments, to the Department by certified mail, return receipt requested or by hand delivery with an acknowledgment of receipt form for the Department's signature to:

Iclal Atay, Ph.D., Chief
Bureau of Release Prevention
401 East State Street, 7th Floor
PO Box 420, Mail Code 22-03D
Trenton, NJ 08625-0420

The date the Department receives the certified mail or executes the acknowledgment will be the date the Department uses to determine VINELAND ELECTRIC UTILITY - DOWN STATION's compliance with this ACO.

19. Unless otherwise specifically provided herein, any communication made by the Department to VINELAND ELECTRIC UTILITY - DOWN STATION pursuant to this ACO shall be sent to

VINELAND ELECTRIC UTILITY - DOWN STATION
P.O. Box 1508
Vineland, NJ 08362-1508

20. VINELAND ELECTRIC UTILITY - DOWN STATION shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving VINELAND ELECTRIC UTILITY - DOWN STATION of its obligations under this ACO, the Act, and/or the regulations promulgated pursuant to the Act.
21. In addition to the Department's statutory and regulatory rights to enter and inspect, VINELAND ELECTRIC UTILITY - DOWN STATION shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.
22. Nothing in this ACO shall preclude the Department from taking enforcement action against VINELAND ELECTRIC UTILITY - DOWN STATION for matters not set forth in the findings of this ACO.

23. No obligations or penalties imposed by this ACO are intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding. All obligations and penalties are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment.
24. VINELAND ELECTRIC UTILITY - DOWN STATION shall give written notice of this ACO to any successor in interest thirty (30) calendar days prior to transfer of ownership or control of the facility or facilities which are the subject of this ACO and shall simultaneously notify the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership or control of VINELAND ELECTRIC UTILITY - DOWN STATION'S facility. In addition, the parties agree that any contract, lease, deed or any other agreement that VINELAND ELECTRIC UTILITY - DOWN STATION enters into to convey the property/facility that is the subject of this ACO shall include a provision which states that the successor, assignee, tenant or purchaser has agreed to assume the obligations imposed by this ACO.
25. The Department reserves all statutory and common law rights to require VINELAND ELECTRIC UTILITY - DOWN STATION to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional measures should the Department determine that such measures are necessary.
26. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
27. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall not be affected thereby and each provision shall be valid and enforced to the fullest extent permitted by law. The Department does, however, retain the right to terminate the remainder of this ACO if, after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.
28. This ACO represents the entire integrated agreement between the Department and VINELAND ELECTRIC UTILITY - DOWN STATION on the matters contained herein.
29. The Department reserves the right to unilaterally terminate this ACO in the event VINELAND ELECTRIC UTILITY - DOWN STATION violates its terms and to take any additional enforcement action it deems necessary.
30. This ACO shall terminate upon receipt by VINELAND ELECTRIC UTILITY - DOWN STATION of written notice from the Department that all the requirements of this ACO have been satisfied.

31. This ACO shall become effective upon the execution hereof by all parties, subject to completion of any required public participation process.

STATION VINELAND ELECTRIC UTILITY - DOWN

DATED: _____

BY: _____

NAME: Anthony Fanucci

TITLE: Mayor

By this signature, I certify that I have full authority to execute this document on behalf of VINELAND ELECTRIC UTILITY - DOWN STATION.

NJDEP

DATED: _____

BY: _____

NAME: Iclal Atay

TITLE: Bureau Chief

By this signature, I certify that I have full authority to execute this document on behalf of NJDEP.