

RESOLUTION NO. 2017-277

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 the Clayville Station combustion turbine, which was installed in October 2015; and

WHEREAS, as a new source, the Clayville turbine has very low air permit limits, based on its installed state-of-the-art emission controls; and

WHEREAS, these 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 the time that the turbine began operation, several emission exceedances, all caused by very brief equipment problems, have been reported; and

WHEREAS, the NJDEP has recently concluded an evaluation of these summary reports filed for 2015 and 2016, which covered the unit's first full year of operation, as well as individual incident reports submitted by the utility explaining the circumstances surrounding the reported exceedances; and

WHEREAS, an affirmative defense has been granted for one of the reported exceedances, based on the submitted incident report, with associated penalties waived in that case; and

WHEREAS, the NJDEP has, however, assessed penalties for two of the other exceedances and has issued a proposed settlement which covers these alleged violations and penalty assessments, as well as penalties for technical deficiencies in meeting monitoring quality assurance requirements; and

WHEREAS, the NJDEP has offered a settlement with an overall 25% penalty reduction from the initially calculated \$6,850 to **\$5,137**; 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 \$5,137 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 Anthony Fanucci  
Bob Dickenson, Business Administrator

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

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

**Date:** June 9, 2017

**Re:** DEP Settlement Agreement – NEA170001-75746  
alleged air permit violations – Clayville turbine, December 2015 to December 2016

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Attached please find a proposed settlement from the New Jersey Department of Environmental Protection (NJDEP) regarding alleged air permit violations at VMEU Clayville Station over its first year of operation. **It is requested that a resolution authorizing execution of this Settlement Agreement be added to the City Council agenda for June 27, 2017.**

The electric utility has an air permit from the NJDEP covering operation of the Clayville Station combustion turbine, which was installed in October 2015. As a new source, the Clayville turbine has very low air permit limits, based on its installed state-of-the-art emission controls. These controls perform very well, and emissions are usually extremely low and below the permit 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.

Emissions from the Clayville turbine are monitored by continuous emission monitors. Summary reports on the emissions recorded by these monitors are submitted quarterly to the NJDEP. From the time that the turbine began operation, several emission exceedances, all caused by very brief equipment problems, have been reported. (Exceedances occurred in less than 0.2% of operating time.)

DEP has recently concluded an evaluation of summary reports filed for 2015 and 2016, which covered the unit's first full year of operation, as well as individual incident reports submitted by the utility to explain the circumstances surrounding reported exceedances. An affirmative defense has been granted for one of the reported exceedances, based on the submitted incident report, with associated penalties waived in this case. DEP has, however, assessed penalties for two of the other exceedances. The attached proposed settlement from the DEP regional enforcement section, which was received on May 30, 2017, covers these alleged violations and penalty assessments, as well as penalties for technical deficiencies in meeting monitoring quality assurance requirements. (See summary on the next page.)

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 \$6,850 to \$5,137. 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.

(Please note that this is the second such settlement brought to VMEU by DEP air enforcement personnel over the past year. The DEP enforcement office has been working to resolve a backlog of about five years of reports, hence multiple actions have been initiated in a short timeframe. A similar settlement was previously approved by City Council in November regarding VMEU Unit 11 operation from 2013 to 2015. Additional resolutions regarding reported exceedances at VMEU Unit 11 in 2016, as well as past incidents at VMEU West Station, are expected.)

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

Thanks.

The citations covered by the attached Clayville agreement, as described by average gas concentrations of nitrogen oxides (NOx) and other technical monitoring requirements, are summarized below:

Month	Permit limit	Reading	Duration
<b>Nitrogen Oxide (NOx) Emissions</b>			
June 28, 2016	2.5 ppm	3.1 ppm	2 hr.
June 28, 2016	5.52 lb/hr	6.35 lb/hr	2 hr.
September 24, 2016	2.5 ppm	3.8 ppm	1 hr.
September 24, 2016	5.52 lb/hr	7.0 lb/hr	1 hr.
<b>Monitoring Requirements</b>			
90% valid data capture in Q4, 2015 – Clayville CEMS data capture was 88% in this quarter. (This was based on a very small number of operating hours, however. Excess monitor downtime was the equivalent of only 24 minutes, and was due to required QA testing which could not be avoided.)			
Cylinder Gas Audit required in Q2, 2016. Due 06/30/16 – performed on 07/22/16.			



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF AIR ENFORCEMENT

Bureau of Air Compliance and Enforcement-Southern

2 Riverside Drive-Suite 201, Camden, NJ 08103

Tel: (856) 614-3601

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CHRIS CHRISTIE  
Governor

BOB MARTIN  
Commissioner

KIM GUADAGNO  
Lt. Governor

IN THE MATTER OF  
VINELAND CITY MUNICIPAL ELECTRIC  
UTILITY - CLAYVILLE  
PO BOX 1508 - 640 E WOOD STREET  
VINELAND, NEW JERSEY 08362-1508

### SETTLEMENT AGREEMENT

EA ID # NEA170001 – 75746

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 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 24, 2017, the following violations 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. 7:27-8.13(a) and N.J.A.C. 7:27-8.3(e), Continuous Emission Monitoring System (CEMS) Requirement: (NO<sub>x</sub>, CO, and O<sub>2</sub>). Install and operate Continuous emission monitoring System (CEMS) and conduct Performance Specification Test (PST) in accordance with the NJDEP Technical Manual 1005, to demonstrate compliance with NO<sub>x</sub>, CO, and O<sub>2</sub> emitted from emission point PT1, as specified in the compliance plan for OS Summary and OS2. Continuous Emission Monitoring (CEM) system must comply with USEPA performance and siting specifications (40 CFR Part 60, Appendix B). Emissions shall be monitored during all operation of the turbine. Continuous parametric monitors and continuous parametric data recorders shall be installed and operated to demonstrate compliance with monitoring parameters, for example, fuel flow rate, temperature, etc.



Description of Noncompliance: The Department has determined that during the fourth quarter of 2015, you failed to fulfill all the conditions and provisions of PCP140001, U1, OS0, Reference #6, by not meeting 90% data availability for the Carbon Monoxide and Nitrogen Oxide Continuous Emission Monitors as specified in the approved protocol. The CO and NOx monitor was not providing valid data (13.0% downtime).

- B. Requirement: Pursuant to N.J.A.C. 7:27-8.13(a) and N.J.A.C. 7:27-8.3(e), Continuous Emission Monitoring System (CEMS) Requirement: (NOx, CO, and O2). Install and operate Continuous emission monitoring System (CEMS) and conduct Performance Specification Test (PST) in accordance with the NJDEP Technical Manual 1005, to demonstrate compliance with NOx, CO, and O2 emitted from emission point PT1, as specified in the compliance plan for OS Summary and OS2. Continuous Emission Monitoring (CEM) system must comply with USEPA performance and siting specifications (40 CFR Part 60, Appendix B). Emissions shall be monitored during all operation of the turbine. Continuous parametric monitors and continuous parametric data recorders shall be installed and operated to demonstrate compliance with monitoring parameters, for example, fuel flow rate, temperature, etc.

Description of Noncompliance: You failed to ensure that all requirements of the operating permit are met. Specifically, you failed to conform to USEPA performance and siting specifications in 40 CFR part 60, Appendix B, or alternatives acceptable to the Bureau of Technical Services by failing to conduct a CGA for CO/O2 and NOx during the 2nd quarter 2016 in violation of PCP140001, U1, OS0, Reference #6. The cylinder gas audit was conducted on 7/22/2016.

- C. Requirement: Pursuant to N.J.A.C. 7:27-8.13(h) and N.J.A.C. 7:27-8.3(e), NOx (Total)  $\leq$  2.5 ppmvd @ 15% O2. Based on vendor guarantee / SOTA.

Description of Noncompliance: During the second quarter 2016, on June 28, you exceeded the allowable NOx emission limit of  $\leq$  2.5 ppmvd @ 15% O2 on Unit 1 in violation of Preconstruction Permit PCP140001-75746, Subject Item U1, OS2, Reference #9 L.

- D. Requirement: Pursuant to N.J.A.C. 7:27-8.13(h) and N.J.A.C. 7:27-8.3(e), NOx (Total)  $\leq$  5.52 lb/hr. Based on manufacturer guarantee. This emission limit based on manufacturer's worst case operating data (100% load at 40 degrees Fahrenheit).

Description of Noncompliance: During the second quarter 2016, on June 28, you exceeded the allowable NOx emission limit of  $\leq 5.52$  lb/hr on Unit 1 in violation of Preconstruction Permit PCP140001-75746, Subject Item U1, OS2, Reference #11L.

- E. Requirement: Pursuant to N.J.A.C. 7:27-8.13(h) and N.J.A.C. 7:27-8.3(e), NOx (Total)  $\leq 2.5$  ppmvd @ 15% O<sub>2</sub>. Based on vendor guarantee / SOTA.

Description of Noncompliance: During the third quarter 2016, on September 24, you exceeded the allowable NOx emission limit of  $\leq 2.5$  ppmvd @ 15% O<sub>2</sub> on Unit 1 in violation of Preconstruction Permit PCP140001-75746, Subject Item U1, OS2, Reference #9 L.

- F. Requirement: Pursuant to N.J.A.C. 7:27-8.13(h) and N.J.A.C. 7:27-8.3(e), NOx (Total)  $\leq 5.52$  lb/hr. Based on manufacturer guarantee. This emission limit based on manufacturer's worst case operating data (100% load at 40 degrees Fahrenheit).

Description of Noncompliance: During the third quarter 2016, on September 24, you exceeded the allowable NOx emission limit of  $\leq 5.52$  lb/hr on Unit 1 in violation of Preconstruction Permit PCP140001-75746, Subject Item U1, OS2, Reference #11L.

3. Therefore, the Department has determined that the VINELAND CITY MUNICIPAL ELECTRIC UTILITY is liable for civil administrative penalties totaling \$6,850.00 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 an e-mail communication on January 26, 2017 and March 13 & 28, 2017 and have agreed to settle this matter in accordance with the following terms:
  - a. In full settlement of the aforementioned violation(s) VINELAND CITY MUNICIPAL ELECTRIC UTILITY shall pay a penalty of \$5,137.00 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.

- b. 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.
- c. 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.
- d. 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.
- e. 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).
- f. 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: \_\_\_\_\_

Mary M. Toogood, Manager  
Bureau of Air Compliance & Enforcement-  
Southern

VINELAND CITY MUNICIPAL  
ELECTRIC UTILITY

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

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

John Lillie, Director  
Vineland Municipal Electricity Utility