

RESOLUTION NO. 2020-293

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

WHEREAS, the Howard M. Down Generating Station (HM Down Station) and West Generating Station (West Station) 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 21, 2020, an NJDEP inspector and plan review specialist from the Bureau of Release Prevention, along with two other DEP staff members, visited the above stations to evaluate current facility compliance with the DPCC regulations, and

WHEREAS it was found that, at West Station a required five-year tank inspection was performed six months beyond the due date, in September 2018, and that required quarterly inspections of cleanup and removal equipment and supplies were not conducted in the first and second quarter of 2017, and

WHEREAS it was found that, at HM Down Station, required daily inspections of the permeable secondary containment surrounding the facility bulk fuel oil tank had been missed on a number of weekend and holiday days within the past three years and that records were not available for inspection for a required quarterly inspection of cleanup and removal equipment and supplies in the third quarter of 2017, and

WHEREAS, the deviations from the requirements at VMEU West Station have been identified and a penalty in the amount of \$4,000.00 has been assessed and proposed in the attached Settlement Agreement NEA200001-061400234000; and

WHEREAS, the deviations from the requirements at VMEU Howard M. Down Station have been identified and a penalty in the amount of \$2,250.00 has been assessed and proposed in the attached Settlement Agreement NEA200001-061400865000; and

WHEREAS, it is deemed to be in the best interest of the City to settle these matters and it is recommended by the Municipal Electric Utility that the Settlement Agreements 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 the two Settlement Agreements in the forms attached hereto.

BE IT FURTHER RESOLVED that the City of Vineland shall pay the sum of \$6,250.00 to the New Jersey Department of Environmental Protection in full settlement of the penalties 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 *Lisa A. Fleming*

Date: July 7, 2020

Re: DEP proposed Settlement Agreements
NEA200001-06140086500 (Down Station) and NEA200001-06140023400 (West Station)
For alleged violations of the oil discharge prevention regulations at
VMEU Down and West Stations, 2017 to 2020

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 21, 2020, an NJDEP inspector and plan review specialist from the Bureau of Release Prevention, along with two other DEP representatives, visited both 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, for West Station, a full internal and external inspection of the Bulk Fuel Oil tank at the site, required every five years, was performed six months later than the date it was due, and that required quarterly inspections of spill control supplies and equipment were not performed during two quarters of 2017. For Down Station, it was found that required daily inspections had been missed on a number of weekend and holiday days during parts of the preceding three years (primarily in 2017 and 2018) and that a record of a required quarterly inspection of spill control supplies and equipment was not available for the third quarter of 2017.

These deviations from the requirements have been identified in proposed Settlement Agreements (Settlements), copies of which are attached. Under the proposed Settlements, penalties of \$4,000 and \$2,250 are proposed for West and Down Stations, respectively.

The citations and assessed penalties are within the reasonable enforcement discretion of the NJDEP, based on the penalty schedules prescribed by regulation. Because further legal appeals would be costly to the City, it is recommended that the Settlements be approved by City Council, allowing the Mayor to sign them and their provisions to be executed.

We are requesting that a resolution authorizing execution of these Settlement Agreements be added to the next City Council agenda. If you have any questions about the settlements or facts of the matter, please feel free to call me (x4163). Thank you.



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF RELEASE PREVENTION

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

401 East State Street
P.O. Box 420, Mail Code 22-03D
Trenton, New Jersey 08625-0420
Tel. (609) 633-0610 • Fax. (609) 633-7031
www.nj.gov/dep

CATHERINE R. McCABE
Commissioner

CERTIFIED MAIL
7017 1450 0001 4504 6502

July 7, 2020

Lisa Fleming
VINELAND CITY ELECTRIC UTILITY WEST STATION
PO Box 1508
Vineland, NJ 08362-1508

RE: VINELAND ELECTRIC UTILITY - WEST STATION
Draft Settlement Agreement
EA ID #: NEA200001 - 061400234000

Dear Lisa Fleming:

In accordance with the agreement reached between the Department and VINELAND ELECTRIC UTILITY - WEST STATION, enclosed is the draft Settlement Agreement.

If this draft Settlement Agreement 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 Settlement Agreement, within 15 days of receipt contact Christopher H Lucien, at (609) 984-4306 or by letter at the address above. **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 about this process, please contact Christopher Lucien, as indicated above.

Sincerely,

Paul Komosinsky, Chief
Bureau of Release Prevention

Enclosure
c: Christopher H Lucien



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IN THE MATTER OF	SETTLEMENT AGREEMENT
VINELAND CITY ELECTRIC UTILITY WEST STATION	

EA ID # NEA200001 - 061400234000

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 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.
2. VINELAND CITY ELECTRIC UTILITY WEST STATION owns and/or operates a facility located at New Peach and Lubins Lane, Block(s) and Lot(s) [402, 16] [406, 12], Vineland City, Cumberland County, New Jersey (ID# 061400234000).
3. As the result of a compliance evaluation conducted on February 21, 2019, the Department has determined that VINELAND CITY ELECTRIC UTILITY WEST STATION failed to comply with applicable requirements as follows:
 - a. Requirement: Pursuant to N.J.A.C. 7:1E-2.16(h), for aboveground storage tanks with a storage capacity greater than 2,000 gallons that do not fall into one of the categories outlined above, or as an alternative to any integrity testing protocol established above, the owner or operator may perform integrity testing every five (5) years in accordance with the following, as appropriate: 1. A shell thickness test and a bottom thickness test, performed to a standard such as ASME Section V, and capable of detecting corrosion, erosion or other wall or bottom thinning to less than a predetermined minimum thickness to ensure sufficient structural strength; 2. Visual inspection of the exterior of the tank, checking for cracks and leaks; and 3. Visual inspection of the foundation and ancillary equipment, such as inlet and outlet pipes

and valves, checking for settlement, cracks, leaks, corrosion and other indications of structural problems. [N.J.A.C. 7:1E- 2.16(h)]

Description of Noncompliance: You failed to comply with the testing requirements for all storage tanks with a capacity greater than 2,000 gallons storing hazardous substances. Specifically, you failed to perform testing and inspection of the No. 2 bulk fuel oil storage tank that was due in March 2018. The testing and inspection of this tank was conducted in September 2018.

- b. 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. [N.J.A.C. 7:1E- 2.10(a)6iii]

Description of Noncompliance: You failed to inspect all cleanup and removal equipment and supplies quarterly. Specifically, you did not conduct first and second quarter visual inspections in 2017.

4. Pursuant to N.J.S.A. 58:10-23.11u and N.J.A.C. 7:1E-6.1 *et seq.*, the Department has determined that VINELAND CITY ELECTRIC UTILITY WEST STATION is liable for civil administrative penalties for the above referenced violation(s).
5. The Department and VINELAND CITY ELECTRIC UTILITY WEST STATION had a telephone conversation on June 1, 2020 and have agreed to settle this matter in accordance with the following terms:
- a. VINELAND CITY ELECTRIC UTILITY WEST STATION agrees to operate in compliance with all applicable regulations and permits therefore the Department is willing to accept a penalty as follows:
- In full settlement of the aforementioned violation(s) and/or enforcement action(s), VINELAND ELECTRIC UTILITY WEST STATION shall pay a penalty of \$4,000.00 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 ELECTRIC UTILITY WEST STATION fails to pay the above penalty in accordance with the terms and conditions of this Settlement Agreement, then this settlement offer shall be null and void and the Department may pursue all legal remedies including the collection of civil administrative penalties in the full amount provided by law.
- c. Nothing in this Settlement Agreement shall preclude the Department from taking

enforcement action against VINELAND CITY ELECTRIC UTILITY WEST STATION for violations not set forth in this Settlement Agreement.

- d. 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).
- e. This Settlement Agreement shall be effective upon execution by both parties.

VINELAND CITY ELECTRIC UTILITY WEST STATION

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 CITY ELECTRIC UTILITY WEST STATION.

NJDEP

DATED: _____

BY: _____

NAME: Paul Komosinsky

TITLE: Chief, Bureau of Release Prevention

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



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DEPARTMENT OF ENVIRONMENTAL PROTECTION
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SHEILA Y. OLIVER
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CATHERINE R. McCABE
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CERTIFIED MAIL
7017 1450 0001 4504 6519

July 7, 2020

Lisa Fleming
VINELAND ELECTRIC UTILITY DOWN STATION
Po Box 1508
Vineland, NJ 08362-1508

RE: VINELAND ELECTRIC UTILITY - DOWN STATION
Draft Settlement Agreement
EA ID #: NEA200001 - 061400865000

Dear Ms. Fleming:

In accordance with the agreement reached between the Department and VINELAND ELECTRIC UTILITY - DOWN STATION, enclosed is the draft Settlement Agreement.

If this draft Settlement Agreement 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 Settlement Agreement, within 15 days of receipt contact Christopher H Lucien, at (609) 984-4306 or by letter at the address above. **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 about this process, please contact Christopher Lucien, as indicated above.

Sincerely,

Paul Komosinsky, Chief
Bureau of Release Prevention

Enclosure

c: Christopher H Lucien



State of New Jersey

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IN THE MATTER OF	SETTLEMENT AGREEMENT
VINELAND ELECTRIC UTILITY DOWN STATION	

EA ID # NEA200001 - 061400865000

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 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.
2. VINELAND ELECTRIC UTILITY DOWN STATION owns and/or operates a facility located at 211 N West Avenue, Block(s) and Lot(s) [2908, 1] [2909, 1] [2910, 1] [2916, 1] [2933, 1], Vineland City, Cumberland County, New Jersey (ID# 061400865000).
3. As the result of a compliance evaluation conducted on February 21, 2020, the Department has determined that VINELAND ELECTRIC UTILITY DOWN STATION failed to comply with applicable requirements as follows:
 - a. 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; [N.J.A.C. 7:1E- 2.10(a)2]

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. Specifically, you failed to conduct daily inspections for Tank No. 2 on numerous weekends and holidays in 2017, 2018, and 2019.

- b. **Requirement:** Pursuant to N.J.A.C. 7:1E-2.15(e), all records shall be available for inspection upon the request of the Department or appropriate local agencies. [N.J.A.C. 7:1E- 2.15(e)]

Description of Noncompliance: You failed to make records available for inspection upon request of the Department. Specifically, you failed to provide the third quarter inspection record for cleanup and removal equipment in 2017.

4. Pursuant to N.J.S.A. 58:10-23.11u and N.J.A.C. 7:1E-6.1 *et seq.*, the Department has determined that VINELAND ELECTRIC UTILITY DOWN STATION is liable for civil administrative penalties for the above referenced violation(s).
5. The Department and VINELAND ELECTRIC UTILITY DOWN STATION had a telephone conversation on June 1, 2020 and have agreed to settle this matter in accordance with the following terms:
 - a. VINELAND ELECTRIC UTILITY DOWN STATION agrees to operate in compliance with all applicable regulations and permits therefore the Department is willing to accept a penalty as follows.

In full settlement of the aforementioned violation(s) and/or enforcement action(s), VINELAND ELECTRIC UTILITY DOWN STATION shall pay a penalty of \$2,250.00 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 ELECTRIC UTILITY DOWN STATION fails to pay the above penalty in accordance with the terms and conditions of this Settlement Agreement, then this settlement offer shall be null and void and the Department may pursue all legal remedies including the collection of civil administrative penalties in the full amount provided by law.
- c. Nothing in this Settlement Agreement shall preclude the Department from taking enforcement action against VINELAND ELECTRIC UTILITY DOWN STATION for violations not set forth in this Settlement Agreement.
- d. 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).
- e. This Settlement Agreement shall be effective upon execution by both parties.

VINELAND ELECTRIC UTILITY DOWN STATION

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: Paul Komosinsky

TITLE: Chief, Bureau of Release Prevention

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