

Resolution 13-033

RESOLUTION AUTHORIZING EXECUTION OF
STIPULATION OF SETTLEMENT RESOLVING WHITLOCK PERMIT APPEAL

WHEREAS, pursuant to the authority vested in the Rockaway Valley Regional Sewerage Authority (hereinafter "RVRSA") by the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and RVRSA's "Service Rules, Regulations Concerning Industrial Users: Industrial Sewer Permits, Regulations concerning Sewer Use: Pretreatment Regulation," adopted March 22, 1984, and amended and supplemented from time to time thereafter, to issue Industrial Sewer Connection (ISC) permits to significant indirect wastewater dischargers to the RVRSA System; and

WHEREAS, Whitlock Packaging Corporation (Whitlock) commenced litigation against the Rockaway Valley Regional Sewerage Authority (RVRSA) entitled Whitlock Packaging Corp. v. Rockaway Valley Regional Sewerage Authority, OAL Docket No.. MUA 09709-2011 N, to contest provisions of the Final Industrial Sewer Connection (ISC) permit issued by the Authority to Whitlock on April 21, 2011; and

WHEREAS, Whitlock's Request for an Adjudicatory Hearing challenged RVRSA's determination of the Biochemical Oxygen Demand (BOD) limitation of 4,379lbs/day (monthly average) and 6,568 lbs/day (daily max). Further, Whitlock challenged the Authority's decision to change the three (3) month rolling average for the discharge of BOD to a monthly average; and

WHEREAS, Whitlock requested an adjudicatory hearing on or about May 26, 2011, and the Authority thereafter granted the request, which was referred to the Office of Administrative Law for determination as a contested case and assigned to Administrative Law Judge Gail M. Cookson for resolution; and

WHEREAS, the Authority authorized settlement discussions to proceed simultaneously

with the above litigation to avoid further delay, extensive effort and cost; and

WHEREAS, counsel for the parties negotiated the terms of a Stipulation of Settlement in the form attached hereto which concludes the litigation on the terms set forth therein and met the objectives of the Authority in commencing the case; and

WHEREAS, in accordance with the terms of the proposed Stipulation of Settlement, the Authority agrees to propose, for public notice and comment, a permit action that will: increase the Monthly Average Limit contained in Whitlock's Permit for flow from 400,000 GPD to 450,000 GPD; and endorse the Treatment Works Approval (TWA-1) application submitted to the Authority by Whitlock dated July 10, 2012; and increase the monitoring frequency of the BOD₅ parameter to two (2) times per week. Whitlock agrees to pay to the Authority the amount of \$25,000, (\$10,000 of which has been paid to date), representing a mutually agreed upon settlement of the outstanding escrow amount due of \$47,133.29 relevant to the Authority's review and approval of a temporary permit that the Authority issued to Whitlock to allow it to increase its production from May 1, 2011 until September 30, 2011 in three equal monthly installments of \$5,000. Whitlock further agrees to withdrawn with prejudice its hearing request as to all issues raised in the hearing.

NOW, THEREFORE, BE IT RESOLVED by the Rockaway Valley Regional Sewerage Authority as follows:

1. The Chairman is authorized and directed to execute the annexed Stipulation of Settlement.
2. This Resolution shall take effect immediately.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted at a Regular Meeting of
the RVRSA held on March 14, 2013
on motion of Michael Guadagno
and second by Joseph Lowell

ROLL CALL VOTE:

YEAS: (8) Cegelka, Corbett, Guadagno, Hercek, Lowell, MacNeal, Schaefer, Schorno

NAYS: (0) none

ABSTAIN: (1) Secco

ABSENT: (1) Vincitore



Bruce W. MacNeal
Board Secretary