

Resolution 18-057

RESOLUTION AUTHORIZING EXECUTION OF
STIPULATION OF SETTLEMENT
RESOLVING REFRESCO US INC
REQUEST FOR AN ADJUDICATORY HEARING

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, RVRSA is authorized to enforce the terms and conditions of Industrial Sewer Connection (ISC) permits issued to indirect wastewater dischargers to the RVRSA System; and

WHEREAS, Refresco US Inc. (hereinafter "Refresco") discharges wastewater to the RVRSA Publically Owned Treatment Facility, subject to the terms and conditions contained in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and pursuant to an Industrial Sewer Connection Permit (hereinafter the "Permit") issued to Whitlock Packaging Corporation, which permit was thereafter transferred to Refresco; and

WHEREAS, RVRSA issued an Administrative Order/Notice of Civil Administrative Penalty Assessment (AO/NoCAPA) on January 3, 2017, to Refresco, Inc. for alleged violations of the RVRSA's Rules and Regulations and the Permit issued to Refresco and its predecessor in interest, Whitlock Packaging Corporation, and assessing against Refresco a civil administrative penalty in the amount of \$78,000.00 for violations occurring from December 2015 to November 2016; and

WHEREAS, Refresco filed a timely Request for an Adjudicatory Hearing, dated February 15, 2017, before the Office of Administrative Law, disputing the allegations contained in the AO/NoCAPA; and

WHEREAS, RVRSA is authorized to settle this matter in accordance with N.J.A.C. 7:14-8.3; 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 which meets the objectives of the Authority in commencing the case; and

WHEREAS, in accordance with the terms of the proposed Stipulation of Settlement, Refresco agrees to discharge process wastewater only in conformity with the RVRSA's Rules and Regulations and Refresco's Permit and to pay to the Authority the amount of \$38,000, representing the minimum mandatory penalty, assessed in accordance with N.J.A.C. 7:14-8.3, for the violations alleged by RVRSA. Refresco further agrees to withdraw, with prejudice, its hearing request as to all issues raised in the hearing, and

WHEREAS, Refresco fully cooperated with RVRSA in this matter, including attending meetings with RVRSA and its representatives, and has committed to compliance goals, and has demonstrated its resolve with nearly complete compliance since Refresco took over the Wharton facility; and

WHEREAS, RVRSA desires to resolve this matter in accordance with the terms of the attached Stipulation of Settlement.

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 June 14, 2018.

On motion of Hector Schorno

and seconded by Michael Guadagno

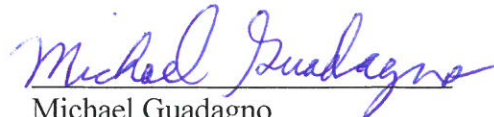
ROLL CALL VOTE:

YEAS: (10) Andes, Cegelka, Corbett, Guadagno, Isselin, Lowell, Recchia, Rossi, Schorno , Vincitore

NAYS: (0) None

ABSTAIN: (0) None

ABSENT: (0) None


Michael Guadagno
Board Secretary

MARAZITI FALCON LLP
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
By: DIANE ALEXANDER, ESQ
(973) 912-9008

REFRESCO US INC.)
)
Petitioner,)
)
v.)
)
ROCKAWAY VALLEY REGIONAL)
SEWERAGE AUTHORITY,)
)
Respondent.)
)

STIPULATION OF
SETTLEMENT

This Stipulation of Settlement is entered into by and between Rockaway Valley Regional Sewerage Authority ((hereinafter "RVRSA") and Refresco US, Inc., (hereinafter "Petitioner") pursuant to the authority vested in RVRSA by the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and regulations promulgated pursuant thereto at N.J.A.C. 7:14A-19. This matter arises from a challenge to an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AO/NOCAPA") issued to Petitioner (successor in interest to Whitlock Packaging Corporation as of September, 2016); and

WHEREAS, Petitioner operates an establishment located at 92 North Main Street, Borough of Wharton, Morris County, New Jersey (Block 1201, Lots 11 & 16 and Block 1101, Lots 8, 9 and 26); and

WHEREAS, Petitioner discharges wastewater to the RVRSA Publically Owned Treatment Facility, and at all times relevant herein, Petitioner's discharge of wastewater was subject to the terms and conditions contained in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and pursuant

to an Industrial Sewer Connection Permit (hereinafter the "Permit") issued to Whitlock Packaging Corporation, which permit was thereafter transferred to Petitioner; and

WHEREAS, the effective date of the Permit was August 15, 2014 and the expiration date of the Permit is August 14, 2017. Pursuant to the Permit authorizing the discharge of process wastewater to the RVRSA, the introduction of BOD Loading into the publicly owned treatment facility in excess of 6,568 lbs/day (daily maximum) 4,379 lbs/day (monthly average) is prohibited; and

WHEREAS, the RVRSA alleges that the monitoring reports of Petitioner, and its predecessor in interest, Whitlock Packaging Corporation, indicates that pollutants in excess of the Permit limitation have been discharged to the RVRSA, as indicated below:

Monitoring Period	Parameter	Permit Limit	Reported Result
December, 2015	Monthly BOD (Loading)	4,379 lbs/day	4,846 lbs/day
March, 2016	Monthly BOD (Loading)	4,379 lbs/day	6,563 lbs/day
April, 2016	Monthly BOD (Loading)	4,379 lbs/day	6,315 lbs/day
May, 2016	Monthly BOD (Loading)	4,379 lbs/day	4,679 lbs/day
July, 2016	Monthly BOD (Loading)	4,379 lbs/day	4,615 lbs/day
September, 2016	Monthly BOD (Loading)	4,379 lbs/day	4,522 lbs/day
November, 2016	Monthly BOD (Loading)	4,379 lbs/day	4,996 lbs/day
4 th Quarter, 2015	Total Suspended Solids (TSS)		Failure to Sample

WHEREAS, an AO/NOCAPA was issued to Petitioner on January 3, 2017, ordering Petitioner to discharge process wastewater only in conformity with the RVRSA's Rules and Regulations, Petitioner's Permit and RVRSA's Regulations, as well as, the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the regulations promulgated pursuant thereto at

N.J.A.C. 7:14A-1.1 et seq.. and assessing against Petitioner a civil administrative penalty in the amount of \$78,000.00 for violations occurring from December 2015 to November 2016; and

WHEREAS, Petitioner fully cooperated with RVRSA on the matter, including attending meetings with RVRSA, and its representatives, and has committed to compliance goals, and has demonstrated its resolve with nearly complete compliance since Refresco took over the Wharton facility; and

WHEREAS, Petitioner timely requested an adjudicatory hearing from the New Jersey Department of Environmental Protection ("NJDEP"), Office of Legal Affairs, to dispute the issuance and terms of terms of the AO/NOCAPA, dated February 15, 2017; and

WHEREAS, RVRSA is authorized to settle this matter in accordance with N.J.A.C. 7:14-8.3; and

WHEREAS, in the interest of resolving this matter, RVRSA and Petitioner agree to settle this matter in accordance with the following terms of this Stipulation of Settlement.

NOW, THEREFORE, IT IS HEREBY AGREED THAT:

1. Petitioner shall submit to RVRSA a payment in the amount of \$38,000.00 within 30 days of the full execution of this Stipulation of Settlement. RVRSA calculated this sum based upon N.J.S.A. 58:10A-10(d) (4) and N.J.S.A. 58:10A-10.1, which establish restrictions upon the amount of an assessment that may be compromised and minimum mandatory penalty assessments. Said payment shall be made payable to: "Rockaway Valley Regional Sewerage Authority," and shall be submitted to:

Rockaway Valley Regional Sewerage Authority
Attn: JoAnn Mondsini, Executive Director
RD #1. 99 Greenbank Road
Boonton, New Jersey 07005

2. Petitioner's discharge of process wastewater shall continue to be governed in accordance with the RVRSA's Rules and Regulations, Petitioner's Permit and RVRSA's Regulations, as well as the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the regulations promulgated pursuant thereto at N.J.A.C. 7:14A-1.1 et seq.

3. Payment of the full amount of the penalty and compliance with the terms contained herein shall constitute full, final, and complete settlement of any and all violations or alleged violations reported to RVRSA, or of which RVRSA is aware, prior to the date of execution of this Stipulation of Settlement.

4. Petitioner hereby waives its rights to an adjudicatory hearing on the matters that are the subject of the AO/NOCAPA pursuant to N.J.S.A. 52:14B-1 et seq. By entering into this Stipulation of Settlement, Petitioner's February 15, 2017 hearing request shall be deemed withdrawn with prejudice as to all issues raised in the hearing request. Petitioner agrees to notify the Office of Legal Affairs and the Office of Administrative Law of its withdrawal of these issues within 10 days of its receipt of a fully executed Stipulation of Settlement.

5. Nothing in this Stipulation of Settlement shall preclude RVRSA from taking enforcement action against Petitioner for violations that were not reported to RVRSA and which the RVRSA was aware prior to the date of execution of this Stipulation of Settlement.

6. Nothing in this Stipulation of Settlement shall be deemed an admission by Petitioner that it violated or is liable under any provision of any law, regulation, resolution or permit, including, but not limited to, those referenced in this Stipulation of Settlement.

7. The Authority reserves the right to require Petitioner to take additional actions if such actions are necessary to protect health, safety, welfare, the Authority's treatment system or the environment. Nothing in this agreement shall constitute a waiver of any rights of the RVRSA to take

any action pertaining to the enforcement of any of the laws of the State of New Jersey should the RVRSA determine that such measures are necessary. Petitioner reserves its rights in defense of any such pending or future actions by the RVRSA.

GENERAL PROVISIONS

8. The provisions of this agreement shall be binding on, and inure to the benefit of, Petitioner, its owners, officers, shareholders, and agents, not individually, but, in their official capacity; successors; assigns; receivers and trustees in bankruptcy or otherwise. No obligations imposed by this Stipulation of Settlement are intended to constitute debt, damage claim, penalty or other civil action which could be limited or discharged in a bankruptcy proceeding. All obligations imposed by this Stipulation of Settlement shall constitute continuing regulatory obligations and are intended to protect the public's health, safety and welfare.

9. Petitioner agrees not to contest the authority or jurisdiction of the Authority to enter into this Stipulation of Settlement and also agrees not to contest the terms of this Stipulation of Settlement in any action to enforce its provisions.

10. This Stipulation of Settlement contains the entire understanding of the parties, and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

11. This Stipulation of Settlement shall be construed as if it were drafted by both parties and both parties waive all statutory and common law presumptions that would serve to have this agreement construed in favor of, or against, any party as the drafter hereof.

12. No modification or waiver of this Stipulation of Settlement shall be valid except by written amendment executed on behalf of Petitioner and the RVRSA.

REFRESCO US INC.:

Dated: 5-25-18

By: Chris DeGrave
Chris DeGrave
General Manager

ROCKAWAY VALLEY REGIONAL
SEWERAGE AUTHORITY:

Dated: _____

By: _____
JoAnn Mondsini, Executive Director