



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

January 30, 2014

Erie County Legislature
92 Franklin Street – Fourth Floor
Buffalo, New York 14202

**RE: Division of Sewerage Management National Association of Clean Water Agencies
Legal Challenge**

Honorable Members:

Enclosed please find a memorandum from the Department of Environment and Planning pertaining to a legal challenge through the National Association of Clean Water Agencies.

Should your honorable body require further information, I encourage you to contact the Department of Environment and Planning. Thank you for your consideration on this matter.

Sincerely,

Mark C. Poloncarz, Esq.
Erie County Executive

By

A handwritten signature in blue ink, appearing to read "Richard Tobe", is written over a horizontal line.

Richard Tobe
Deputy County Executive

MCP/mc
Enclosure

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Environment and Planning
Re: Division of Sewerage Management
National Association of Clean Water Agencies
January 21, 2014

SUMMARY

A resolution from the County of Erie Legislature is requested authorization for the Division of Sewerage Management, on behalf of Erie County Sewer District (ECSD) No. 3, to issue a payment of \$3,000 to a National Association of Clean Water Agencies (NACWA) legal challenge on United States Environmental Protection Agency (USEPA) rules/regulations pertaining to sewage sludge incinerators.

FISCAL IMPLICATIONS

There are no fiscal implications to the County's General Fund. Payment would be made from an ECSD No. 3 operating account in the 2014 adopted budget.

REASONS FOR RECOMMENDATION

The USEPA implemented regulations pertaining to sewage sludge incinerators that will require costly modifications to the assets and operations of the Southtowns Advanced Wastewater Treatment Facility. In response to the USEPA's action, NACWA formed a coalition of sanitary sewer service providers across the Country to lead a legal and administrative challenge of these rules/regulations. Pursuant to Legislative Comm. 13E-23 (2011), ECSD No. 3 joined this coalition in 2011 to share in the advocacy costs, as opposed to incurring substantial expenses by challenging the regulations on its own. The first phase of this challenge was completed in 2013 – with some positive results. Therefore, it is the desire of ECSD No. 3 to contribute to the second phase of this challenge.

BACKGROUND INFORMATION

The ECSD No. 3 Southtowns Advanced Wastewater Treatment Facility operates two (2) sewage sludge incinerators. The USEPA released final rules/regulations on February 21, 2011 titled "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units." The new rules, in the opinion of NACWA and the Division of Sewerage Management, have significant negative impacts on utilities operating incinerators as a means to manage sludge/solids conveyed to wastewater treatment plants. Furthermore, it was believed that the final rules/regulations contained several legal and technical flaws and provided unrealistic guidelines without properly analyzing the consequences of implementation.

As a result, NACWA formed a coalition of sanitary sewer service providers across the Country to lead a legal and administrative challenge of these rules/regulations. Each utility in the United States that operated a sewage sludge incinerator was contacted and was requested to make a monetary payment (per incinerator) to this coalition. Pursuant to Legislative Comm. 13E-23 (2011), ECSD

Comm. 3E-14

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No. 3 contributed \$10,000 to this initial challenge (Phase 1).

The Phase 1 culminated with a decision from United States Court of Appeals – District of Columbia Circuit on August 20, 2013. The ruling from the panel of judges was deemed by NACWA as a “partial victory.” The court sided with USEPA on the statutory arguments concerning the section of Federal Law that the rules/regulations were developed from. However, the court sided with NACWA on the majority of the technical arguments and further remanded a number of technical issues back to USEPA for additional consideration. The USEPA is now tasked with either providing additional explanations or develop new limits within the rules/regulations entirely.

Due to the “partial victory” and the real possibility that some portions of the rules/regulations may be modified, NACWA proposed that “Phase 2” of this effort be initiated. Phase 2 will include:

- Submission of an administrative petition to USEPA asking the Agency to administratively stay the current deadlines set forth in the rules/regulations until USEPA’s remand revisions to the rule are complete.
- Continue NACWA’s legal challenge to USEPA’s Non-Hazardous Secondary Materials Rule.
- Engage with USEPA during the rule remand process.
- Provide implementation assistance to coalition participants to meet existing compliance deadlines.

The prospect of contributing an additional \$3,000 for Phase 2 of this challenge was brought forth to the ECSD No. 3 Board of Managers at its December 2013 meeting and the Board unanimously approved this action.

CONSEQUENCES OF NEGATIVE ACTION

If ECSD No. 3 were to take on a legal challenge on its own, the cost would likely be hundreds of thousands of dollars. If Phase 2 of this challenge is successful, it will decrease the potential cost burden for the Southtowns Advanced Wastewater Treatment Facility.

STEPS FOLLOWING APPROVAL

A \$3,000 payment will be remitted on behalf of ECSD No. 3 to NACWA to support Phase 2 of the coalition’s efforts.

sk

Maria R. Whyte
Commissioner

Cc: J. Fiegl/ 0.11.0 Resolution
J. Carr/R. Ferber/D. Millar/M. Salah/S. Tirone/7.2.3.7.Subpart 0

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF ENVIRONMENT & PLANNING

**RE: Division of Sewerage Management National Association of Clean Water Agencies
Legal Challenge**

WHEREAS, the Erie County Sewer District No. 3 Southtowns Advanced Wastewater Treatment Facility operates two sewage sludge incinerators to manage its solids/sludge; and

WHEREAS, the United States Environmental Protection Agency released final rules/regulations in February 2011 titled "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units"; and

WHEREAS, in the opinion of the Division of Sewerage Management, the final rules/regulations contained several technical and legal flaws and provided unrealistic guidelines without properly analyzing the consequences of implementation; and

WHEREAS, the National Association of Clean Water Agencies formed a coalition to challenge the final rules/regulations on behalf of all utilities in the United States that operate sewage sludge incinerators; and

WHEREAS, Erie County Sewer District No. 3 joined the "Sewage Sludge Incinerator Advocacy Coalition" and contributed \$10,000 pursuant to Legislative Comm. 13E-23 (2011) to assist in this challenge; and

WHEREAS, the National Association of Clean Water Agencies secured a partial victory in an August 2013 court decision concerning technical elements of the referenced rules/regulations; and

WHEREAS, the Erie County Division of Sewerage Management and the Erie County Sewer District No. 3 Board of Managers are desirous of contributing additional monies to the National Association of Clean Water Agencies coalition to assist in the next steps to challenge the final rules/regulations.

NOW, THEREFORE, BE IT

RESOLVED, that the County Director of Budget and the County Comptroller be authorized to pay \$3,000 from Erie County Sewer District No. 3 Professional Services Account 516020 in the 2014 adopted budget, to the National Association of Clean Water Agencies, for the Sewage Sludge Incinerator Advocacy Coalition; and be it further

RESOLVED, that the Clerk of the Legislature one (1) certified copy each to the County Executive, the Erie County Comptroller, and the Erie County Director of Budget and Management, and send two (2) certified copies of this resolution to Joseph Fiegl, P.E., Division of Sewerage Management.