

CHARLES RIVER POLLUTION CONTROL DISTRICT
66 Village Street, Medway, MA 02053

Minutes from January 10, 2023 Executive Session Meeting – 3:05 p.m.

The meeting was held in the John McCahill Conference Room at the District's treatment facility. In attendance at the meeting were Chairman David C. Formato, District Commissioners Douglas M. Downing, Ted Kenney, Wolfgang Bauer, Mark Cataldo and Executive Director Elizabeth Taglieri, Engineer Kristen Mucciarone. District Legal Counsel Christopher Petrini of Petrini & Associates and Executive Secretary Barbara W. Maffeo participated remotely. Prior to moving into Executive Session, the Board took a roll call vote in Open Session as required under the Open Meeting Law.

The following attachments were presented during the closed Executive Session.

- Tresca Affected Concrete Loads and Location of Pour dated December 15, 2022, revised on January 10, 2023.
- Commonwealth of Massachusetts Worcester Superior Court Docket: 1685CV1506B dated August 24, 2021 for Executive Session, provided for legal advice Confidential Under G.L. c. 30A, Section 21 (a)(3).
- Commonwealth of Massachusetts regarding Massachusetts Attorney General's Civil Investigative Demand 2018-FCD-15 Tresca Brothers Concrete, Sand & Gravel dated December 13, 2018 for Executive Session, provided for legal advice Confidential Under G.L. c. 30A, Section 21 (a)(3).
- Commonwealth of Massachusetts vs. Tresca Brothers Concrete, Sand & Gravel, Inc. Omnibus Order in Suffolk Superior Court Civil Action No. 1784CV2608 for Executive Session, provided for legal advice Confidential Under G.L. c. 30A, Section 21 (a)(3).

Agenda Item #1 – Meeting with District Counsel Pursuant to G.L. c. 30A, §21(a)(3) and (7) and Suffolk Construction v. DCAM, 449 Mass. 444(207) to obtain legal advice regarding Commonwealth of Massachusetts et al. v. Tresca Brothers Concrete, Sand and Gravel, Inc., Suffolk Superior Court Docket No. 2017-2608-H.

The Director referred the Board to the handout titled Tresca Affected Concrete Loads and Locations of Pour. The Director noted she did further investigation of the concrete pour tickets. Some of the concrete pours had additional testing done to the concrete by a third party vendor, Yankee Engineering. A summary of the results of these samples were provided on the handout. All the samples tested at a minimum met the design strength by 28-days. The Director also physically walked the areas where the concrete was poured: VFD pads, raw wastewater pad, equipment pads and walkway bridge. She did not see any major damage based on this visual inspection.

The Director referred the Board to Handout #3. She highlighted the relevant sections referring to responsive testimony. The highlighted section read, "The burden is then on the ...entity to identify a knowledgeable witness and to take reasonable steps to educate that designee." This passage states that the person that gives testimony should be a knowledgeable witness to the pouring of the concrete at the time of the pour. The Director was not the person responsible for accepting the concrete loads in the field, that would be CDM Smith or the contractor. Should the District require CDM Smith's services for testimony, the District would have to reimburse CDM Smith for their time before (research) and after (testimony) and many of the staff that was employed by CDM Smith between the 2014–2016 time period of the alleged violations may no longer be employed at CDM Smith.

District's Legal Counsel, Christopher Petrini of Petrini and Associates, told the Board that he had reached out to the relator's attorneys for testimony excerpts to help the District decide on whether they should join the suit. Attorney Petrini also gave an overview of the burden of a knowledgeable witness (which would be CDM Smith) and the costs that may be incurred by the District. The attorney for the relators did confirm that should the District decide not to move forward with the suit, the Director would not be called to provide a deposition. Attorney Petrini also added the range of costs recovered by the District could be: \$60,000–\$560,00, depending upon which pours would be recoverable. Tresca could also move for summary judgement, which might result in no recovery for the District.

The Commissioners generally expressed concerns with moving forward with the litigation in view of the absence of a specific identified problem with the concrete pours at issue, the absence of witnesses with knowledge of the pours (other than CDM), the costs of engaging CDM as a witness and the uncertainty of recovery. Taking into account the costs and uncertain recovery of joining the suit, several Commissioners expressed reluctance to proceed. Commissioners Bauer and Downing did want to note in a letter/email to Tresca and the relator's attorneys that the District's decision not to move forward with joining the suit should not be interpreted as an endorsement of the actions of Tresca.

A motion was made by Commissioner Downing and seconded by Commissioner Cataldo to authorize District Legal Counsel, Christopher Petrini to send an email, to be approved by the Chairman and the Director, notifying the relator's attorney's that the District will not join the lawsuit of Commonwealth of Massachusetts et al. v. Tresca Brothers Concrete, Sand and Gravel, Inc., Suffolk Superior Court Docket No. 2017–2608–H. for the reasons described above. A Roll Call Vote was taken.

ROLL CALL VOTE

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| Chairman Formato | yes |
| Commissioner Cataldo | yes |
| Commissioner Bauer | yes |
| Commissioner Downing | yes |
| Commissioner Kenney | yes |

VOTED: That the District approves the preceding motion. The vote was unanimously approved.

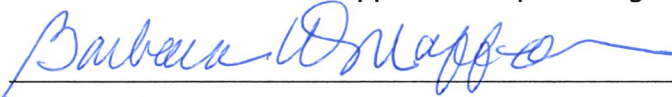
The Chairman expressed the Board's appreciation of the guidance of the Executive Director and District Counsel.

A motion was made by Commissioner Cataldo and seconded by Commissioner Kenney to adjourn the closed Executive Session meeting and return to the open monthly meeting. The meeting was adjourned at 3:20 p.m.

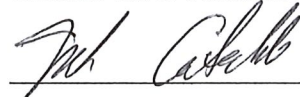
ROLL CALL VOTE

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|----------------------|-----|
| Chairman Formato | yes |
| Commissioner Cataldo | yes |
| Commissioner Bauer | yes |
| Commissioner Downing | yes |
| Commissioner Kenney | yes |

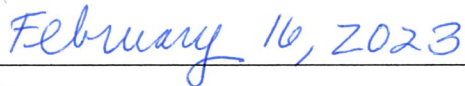
VOTED: That the District approves the preceding motion. The vote was unanimously approved.



Barbara W. Maffeo, Executive Secretary
Charles River Pollution Control District



Mark Cataldo, Clerk
Charles River Pollution Control District



Date

The preceding is presumed to be a complete and accurate account of the items discussed and agreements made unless the District is notified to the contrary within seven days of distribution.