

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

Minutes from December 15, 2022 Executive Session Meeting – 3:30 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 and Mark Cataldo and Executive Director Elizabeth Taglieri, Engineer Kristen Mucciarone and Executive Secretary Barbara W. Maffeo. District Legal Counsel Christopher Petrini of Petrini & Associates was also in attendance. Commissioners Wolfgang Bauer and Ted Kenney were not in attendance.

There was one table presented by the Director that will be on file at the District with the approved minutes: Tresca Affected Concrete Loads and Location of Pour dated December 15, 2022.

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 informed the Commissioners that the deposition she was scheduled to provide had been postponed. The Director stated that the District could either remain or withdraw from the suit at this time.

The Director provided a table, dated December 15, 2022, reflecting the Tresca Affected Concrete Loads and Location of Pour. The table illustrated date of pour, ticket number, purpose of concrete and notes by the Director. These pours all occurred during Phase C construction when Daniel O'Connell and Sons were the general contractors and CDM Smith were the engineers. Phase C construction upgrades happened during 2014–2016. The table listed 35 loads of concrete that may have been affected by excessive amounts of water added, concrete poured more than 120 minutes after batched or inaccurate time of batching. The Director presented the information then turned the meeting over to District Counsel, Christopher Petrini.

Mr. Petrini gave an overview of the False Claim Act suit noting that forty (40) cities and towns were named in the suit. The District is not yet named as an official party but will be added to the suit. The suit alleges that Tresca Concrete, Sand and Gravel, Inc. employees added excess water to concrete and altered the timing clocks on their trucks to allow for more time in the mixing of concrete for a delivery.

Mr. Petrini noted there are penalties that could be recovered by the District if the suit rules in favor of the Plaintiffs. The penalties could range from \$11,000–\$16,000 per delivery violation.

The District has identified 35 concrete loads that could have been compromised. There would be adjustments for inflation and actual damage amounts.

Mr. Petrini noted if the District joined the suit and it was successful, the District would be awarded monies to use as an insurance policy against future deterioration of concrete at the District. This could be seen as being diligent in protecting the rate payers.

Currently, the downside is there have been no observed problems with the concrete pours as of date at the District. This could change in the future. District Counsel also mentioned the Commissioners should consider the amount of time away from her work if the Director would need to be deposed and possibly testify. Attorney Petrini has performed investigatory duties. If the District decides to participate in the case, additional legal expenses would be incurred in accompanying the Director to any depositions/testimony. If CDM Smith is deposed as the engineer during construction, the terms of the contract between the District and CDM Smith specify the District would pay for their time.

Chairman Formato questioned whether the concrete in question was tested, and what were the results? There was discussion related to the actual pours, the age of the concrete, observations of said concrete and timeline of cured concrete. Slump tests were done on site, for each load and the assumption was that the concrete passed the slump test. Periodically the concrete was tested at an outside laboratory, but this was not done on every load. The Director can do further research to determine if any of these tests lined up with the pours in question.

Legal counsel responded by saying that Tresca will say the concrete passed and that the subcontractor had a duty to make sure it had the proper water and that the concrete was timely and properly applied and cured. The suit alleges that the meter timer on the truck was manipulated by the driver at the direction of senior Tresca management to falsely reflect accurate timing of batches in the turner and that water was added after the slump test to keep the concrete flowing.

The Director's response in preparing for the deposition was that neither the Director nor the District were responsible for accepting the concrete loads. It was Daniel O'Connell and Sons, the contractor, whose responsibility it was to accept the loads with oversight from CDM Smith.

Chairman Formato stated that the District hired Daniel O'Connell and Sons. Are they being sued? Attorney Petrini responded that allegedly Tresca is being accused so Daniel O'Connell and Sons are not currently a party in the case. Daniel O'Connell and Sons could be deposed or added as a party to the suit at a later date.

Chairman Formato asked if after twenty years the floor of the clarifier failed because of faulty concrete, would the District be able to go back after Tresca? Attorney Petrini said, no, there are time limits on suits. Today there are no defects as shown, but evidence presented in the

present suit would be used by Tresca to claim that the District should have joined the suit now. In the state of Massachusetts there is a statute called the Statute of Repose which states if you (District) do not take action within a 6-year time frame after substantial completion of the work, you can't go forward.

Chairman Formato asked who the plaintiff is. Attorney Petrini said it is the two Relators, former employees of Tresca, as well as several other municipalities, districts and state entities. The False Claims Act requires complaints to be filed under seal for 120 days (that filing was five years ago). The state of Massachusetts then had 120 days to decide whether the Attorney General's Office would take over the case and pursue it on behalf of the state and all of its political subdivisions. The state requested 6 extensions of time and after two and a half years decided not to join. That means the claimants can still proceed with the case and have done so.

Commissioner Downing asked who identified the slips in question. The Director said the ticket numbers and corresponding dates came from the plaintiffs. The Director then used that information to determine where the concrete was poured from the information in the slips or the daily logs from the Phase C construction project.

Commissioner Downing asked if any of the pads had machinery that vibrated on it. The Director said the Variable Frequency Drives (VFD) were set on concrete pads that were three or four inches thick to keep them off the ground. There are some concrete walls on the travelling bridge filter. At this time, there does not appear to be any broken or cracked concrete. There is rebar in all the concrete and those pads are static pads.

Chairman Formato asked what the deadline was on responding to the suit. Two weeks ago, the court issued an order to notify the court which parties would be included in the case by December 15, 2022. The attorney informed the court that the District was just notified of the court order and had a board meeting today where it would be discussed.

Chairman Formato questioned Attorney Petrini, if the District opts out of the suit, would there be no further depositions of CDM Smith, Daniel O'Connell and Sons or the Director? Attorney Petrini said it would be less likely the District would be involved in the suit.

The Town of Franklin will not pursue the case at this present time. Presently, within the 40 towns listed in the case, it's a 50/50 split on who will proceed and who will not. Attorney Petrini's recommendation to the District is a "soft yes" to proceed. Should there be an award, the District could put the payment in a special account in the budget as insurance to pay for potential problems that may arise in the future.

Commissioner Cataldo was disinclined to proceed at this time, considering the amount of time and money involved for the District. The case hinges on whether the claimants have specific documentation to prove their claim. Mr. Petrini noted that it is not just the two Relators that

have alleged improper business activities by Tresca. According to information provided to Attorney Petrini by Relators' counsel, there are 10 drivers participating in the case who have supported the allegations made by the Relators in the law suit.

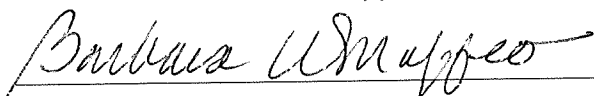
Chairman Formato directed legal counsel to contact the claimants and tell them the District can't make a decision based on the limited information we have, but if the claimants are willing to give the District more information by the next Board meeting, then we can proceed with a definitive answer. Attorney Petrini also added he would ask for a copy of their expert's opinion on the matter at hand, keeping in mind that Tresca will have expert opinions presented too. Commissioner Downing added that if Attorney Petrini finds the decision needs to be made before the next Board meeting, the Board could call a special meeting to vote their decision.

A motion was made by Commissioner Cataldo and seconded by Commissioner Downing to adjourn the closed Executive Session meeting and return to the open monthly meeting. The meeting was adjourned at 4:00 p.m.

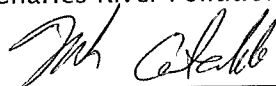
ROLL CALL VOTE

Chairman Formato	yes
Commissioner Cataldo	yes
Commissioner Downing	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

1/10/23

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.