

BOARD OF DIRECTORS FOR CWA AUTHORITY, INC.

RESOLUTION NO. 3-2011

**A RESOLUTION AUTHORIZING ENFORCEMENT OF VIOLATIONS AND ESTABLISHING
AN ADMINISTRATIVE ADJUDICATION PROCESS FOR VIOLATIONS**

WHEREAS, CWA Authority, Inc. (the "CWA Authority"), is a political subdivision in the State of Indiana organized as an Indiana nonprofit corporation and established pursuant to an "Interlocal Cooperation Agreement for the Provision of Utility Services (Wastewater)" (the "Interlocal Agreement") entered into among the Department of Public Utilities of the City of Indianapolis d/b/a Citizens Energy Group ("Citizens"), acting by and through the Board of Directors for Utilities for the City of Indianapolis (the "City") and the Sanitary District of the City of Indianapolis, acting by and through the Board of Public Works (the "District");

WHEREAS, pursuant to Special Ordinance No. 4-2010 and Special Ordinance No. 7-2010 (collectively, the "Ordinances") passed by the City-County Council of Indianapolis and Marion County, Indiana and signed by the Mayor of Indianapolis on July 6, 2010, the City-County Council and the Mayor approved the transfer and delegation to, and vesting in and exercising by CWA Authority, all of the powers, duties, functions and obligations of the District (except the City's taxing power and taxing authority) with respect to the wastewater system; and

WHEREAS, the wastewater system assets were transferred and assigned to CWA Authority on August 26, 2011 and CWA Authority possesses all the powers that are necessary, useful or appropriate to own and operate the wastewater system and/or assert jurisdiction over disposal of sewage, including industrial wastes or other wastes; and

WHEREAS, CWA Authority received approval from the United States Environmental Protection Agency on March 29, 2016, for CWA Authority to directly implement the Industrial Pretreatment Program now; therefore:

BE IT RESOLVED BY THE BOARD OF DIRECTORS FOR CWA AUTHORITY, INC. as follows:

Sec. 1. Definitions.

As used in this resolution, the following terms shall have the meanings ascribed to them in this section. Additional definitions may be found in CWA Authority Resolution 2-2011.

Administrative Hearing Officer is the equivalent of an administrative body as utilized in IC 36-1-9.

Board means the board of directors of CWA Authority, Inc. or their designee.

Department means CWA Authority, Inc.

Party and Parties means and includes the department and respondents.

Respondent or Respondents means a person to whom a notice of hearing is issued pursuant to section 4 of this resolution.

Violation means and includes a violation of one (1) or more of the resolutions of the board concerning:

- (1) unauthorized discharges;
- (2) industrial discharge permits; and
- (3) wastewater hauling.

Sec. 2. General penalties for violations of resolutions.

(a) Any person in violation of any resolution of this Board:

(1) may be subject to a fine, by way of a penalty therefore, of an amount not exceeding:

- (A) two thousand five hundred dollars (\$2,500) for the first violation, act or omission; and
- (B) seven thousand five hundred dollars (\$7,500) for a second or subsequent violation;
- (C) in accordance with IC 36-1-3-8(a)(10)(B).

(b) In addition to the foregoing penalty, the Board may enjoin or abate any violation of a resolution by appropriate action.

Sec. 3. Prosecution; election by counsel for the department.

In all cases where an offense is made punishable or is created by different clauses or sections of a resolution, or of any additions thereto, counsel for the Department may elect under which to proceed; but not more than one (1) prosecution and recovery shall be had against the same person for the same violation of any provision of a resolution actually constituting the same offense.

Sec. 4. Administrative adjudication provided.

Violations may be subject to enforcement in administrative proceedings as provided in this resolution.

Sec. 5. Administrative Hearing Officer(s); appointment and term; compensation; qualifications; conduct.

(a) The administrative adjudication of a violation under this resolution shall be presided over by an Administrative Hearing Officer appointed by the Board. The Board may appoint more than one (1) Administrative Hearing Officer as necessary to address violations pursuant to this resolution. Nothing in this section shall automatically prohibit an individual who is an independent contractor of the Department or the Board from being appointed or serving as an Administrative Hearing Officer provided, however, that the Administrative Hearing Officer shall not be a current employee of the Department or the Board.

(b) A person must have a minimum two (2) years of legal and environmental experience to be appointed as an Administrative Hearing Officer.

(c) An Administrative Hearing Officer shall be appointed to a term of three (3) years beginning immediately upon his or her appointment. At the end of the term, an Administrative Hearing Officer may be considered by the Board for subsequent three (3) year terms.

(d) An Administrative Hearing Officer may be removed, prior to the expiration of any term, by a majority vote of the Board.

(e) An Administrative Hearing Officer shall not preside over a hearing, approve a compliance agreement, or take any other formal action if the Administrative Hearing Officer believes he or she is

subject to disqualification, or if by motion of any party it appears that the Administrative Hearing Officer is subject to disqualification, for:

- (1) Bias, prejudice, or personal interest in the outcome of a hearing;
- (2) Knowledge of a disputed evidentiary fact which might influence the decision;
- (3) Failure to dispose of any motion or hearing in an orderly and reasonably prompt manner after written request by a party; or
- (4) Any cause for which a judge of a court may be disqualified.

(d) Except as to the subjects of hearing schedules and procedures, an administrative hearing officer who:

- (1) Comments publicly on a hearing over which the hearing officer presides; or
- (2) Communicates directly or indirectly with a party or other individual who has an interest in the outcome of a hearing, without notice and opportunity for all parties to participate in the communication;

is subject to disqualification under this section.

Sec. 6. Notice of administrative hearing.

(a) Whenever the Department issues a notice of violation for an environmental violation under the rules of the Board, the Department shall issue a notice of administrative hearing as provided in this resolution.

(b) Service of notice of administrative hearing shall be by United States mail to the respondent's last known address, or by personal service. Service on an artificial person or a person incompetent to receive service shall be made on a person allowed to receive service under the rules governing civil actions in the courts. The Department shall keep a record of the time, date and manner of service.

(c) The Department shall cause a copy of each notice issued pursuant to this section to be delivered to the Administrative Hearing Officer who will preside over the hearing.

(d) Each notice of administrative hearing shall include the following information:

- (1) A caption for the hearing, which shall include the name of each party expected to participate in the hearing, and an official file or other reference number;
- (2) A statement of the date, time and place of the hearing;
- (3) A statement of the nature of the hearing, including the legal authority under which the hearing is to be held, and a summary of the parties' procedural rights at the hearing;
- (4) A statement of the date, time, place, and nature of each alleged violation, and the maximum penalty that can be imposed thereupon;
- (5) The official title and mailing address of the Administrative Hearing Officer and a telephone number through which information concerning the hearing may be obtained;
- (6) The official title, mailing address and telephone number of the person who has been designated to appear on behalf of the department; and

- (7) A statement that a party who fails to respond to the notice of the hearing, or to participate in the hearing, may be held in default.

(e) Notice of administrative hearing shall be issued at least twenty (20) days prior to the date of the hearing.

Sec. 7. Prehearing procedures.

(a) Prior to the hearing, the Administrative Hearing Officer shall give the parties an opportunity to file documents or motions regarding matters such as continuances, discovery, and any other preliminary matters. At the time of filing, a party shall serve a copy of all filed items on each other party.

(b) Motions for continuance shall be filed no later than seven (7) days before the date assigned for the hearing, unless the reason therefor is shown by affidavit to have occurred within the seven-day (7) period.

(c) The Administrative Hearing Officer, upon request by any party or upon the Administrative Hearing Officer's own initiative, may issue subpoenas and discovery in accordance with the rules of procedure governing subpoenas and discovery in judicial proceedings. The party seeking the subpoena or order shall cause them to be served in accordance with these rules of procedure.

(d) The Administrative Hearing Officer, upon request by any party or upon the Administrative Hearing Officer's own initiative, may direct the parties to negotiate a compliance agreement in accordance with section 8 of this resolution in lieu of conducting a hearing. If the parties are unable to reach a mutually acceptable compliance agreement within a reasonable period of time, the Administrative Hearing Officer may proceed with hearing procedures.

Sec. 8. Compliance agreements.

The parties may elect to negotiate a compliance agreement which establishes a program and schedule to attain and maintain compliance, penalties and other provisions necessary to ensure compliance. The compliance agreement shall take effect upon approval by the Administrative Hearing Officer.

Sec. 9. Hearing procedures.

(a) The Administrative Hearing Officer shall afford all parties the opportunity to participate in the hearing to the extent necessary for full consideration of all relevant facts and issues. A party may present evidence in the form of testimony, affidavits and documentation, engage in argument, and conduct cross-examination. A party may participate in person or by counsel at the party's own expense; if the party is not an individual or is incompetent to participate, then the party shall participate by a duly authorized representative.

(b) The department shall have the burden of proving the environmental violation and the burden may be sustained by a preponderance of the evidence.

(c) The Administrative Hearing Officer shall conduct the hearing in an informal manner and without strict adherence to the technical rules of evidence and procedure which govern judicial proceedings. The Administrative Hearing Officer shall rule on the admissibility of any offer of proof, and on other motions, and shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds. The testimony of each party and witness shall be made under oath or affirmation.

(d) The Administrative Hearing Officer may take official notice of any resolution of the Board, and any law or fact that could be judicially noticed in the courts.

(e) The Administrative Hearing Officer shall cause an audio recording of the hearing to be made at the expense of the Department.

Sec. 10. Stipulated penalties.

The decision of the Administrative Hearing Officer or the compliance agreement approved by the Administrative Hearing Officer may require the payment of stipulated penalties if the terms of the decision or compliance agreement are violated.

Sec. 11. Decision.

(a) Upon the conclusion of each hearing or within a maximum of forty-five (45) days after conclusion of each hearing, the Administrative Hearing Officer shall render a decision which shall include a determination whether the respondent violated the resolution as alleged, the amount of civil penalty that must be paid for each violation with instructions on when and how payment shall be made, and a statement of the parties' right to petition for review of the decision.

(b) The Administrative Hearing Officer's decision may include an order affirming, modifying or revoking any order issued by the board with the notice of violation or directing the abatement or cessation of the action described in the notice of violation.

(c) The Administrative Hearing Officer's decision may include a compliance order, establishing a program and schedule to attain and maintain compliance, stipulated penalties, and other provisions necessary to ensure compliance.

(d) The decision shall be based exclusively upon the evidence of record in the hearing and on matters officially noticed therein. The Administrative Hearing Officer's experience and specialized knowledge may be used in the evaluation of the evidence.

(e) The Administrative Hearing Officer shall cause each decision rendered pursuant to this section to be memorialized on a minute sheet or similar written entry into the record. A copy of the minute sheet or similar written entry shall be served upon the parties by United States mail or personal service.

(f) A decision rendered pursuant to this section may be modified by the Administrative Hearing Officer who rendered it, upon the Administrative Hearing Officer's own initiative or by motion of any party. Any motion to modify a decision shall be filed by a party within thirty (30) days after the date of the decision.

Sec. 12. Record of the hearing.

The record of each hearing under this article consists of the following:

- (a) The notice of hearing;
- (b) The notice of violation, if any;
- (c) Any documents, motions, or exhibits filed or entered into evidence;
- (d) Any written orders, subpoenas, and decision of the Administrative Hearing Officer;
- (e) Any compliance agreement negotiated by the parties and approved by the Administrative Hearing Officer or issued by the administrative hearing officer as part of the decision; and
- (f) The audio recording of the hearing and a written transcript of same;

and shall constitute the complete and exclusive record for review of an administrative hearing officer's decision.

Sec. 13. Written transcript of hearing; preparation and cost.

At the written request of respondent, the Department shall provide a written transcript of the audio tape recording of the hearing. Respondent shall pay the reasonable cost of preparing the written transcript, unless respondent files with the hearing officer under oath and in writing, a statement of indigency as described in IC 33-37-3-2. Respondent may cause to be prepared, at his own expense, a written transcript which the Department shall review and certify as to accuracy.

Sec. 14. Petition for review of decision.

A party may petition for judicial review of the final determination of the Department under this section. The petition must be filed in the Marion County Circuit or Superior Court not more than thirty (30) days after the Department issues its determination.

Sec. 15. Effective date.

This resolution shall be effective upon passage by the board and thirty (30) days after publication of this resolution in accordance with IC 5-3-1.

Date of Original Adoption: April 13, 2011

First Amendment: December 12, 2012

Second Amendment: May 20, 2015

Third Amendment: August 15, 2018

CWA Resolution 3-2011

Amended this 15 day of August, 2018, by a vote of
9 ayes and 0 nays.

CWA AUTHORITY, INC.
BOARD OF DIRECTORS



President

Attest:


Secretary