



Agenda Report Details (With Text)

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On agenda: 12/15/2021 **Final action:** 12/15/2021
Title: USP TECHNOLOGIES INDEMNIFICATION AGREEMENT
Sponsors: Rob Thompson
Indexes:
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Attachments: 1. Agenda Report, 2. USP Technologies Indemnification Agreement

| Date | Ver. | Action By | Action | Result |
|------------|------|----------------------|--------------------------|--------|
| 12/15/2021 | 1 | BOARD OF DIRECTORS | | |
| 12/1/2021 | 1 | OPERATIONS COMMITTEE | Recommended for Approval | |

FROM: James D. Herberg, General Manager
Originator: Rob Thompson, Assistant General Manager

SUBJECT:

USP TECHNOLOGIES INDEMNIFICATION AGREEMENT

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION:

Approve an Indemnification Agreement with USP Technologies and the Orange County Sanitation District concerning the potential claimed violation of material patents in a form approved by General Counsel.

BACKGROUND

The Orange County Sanitation District (OC San) operates and maintains a regional wastewater collection system to convey flows from local agencies to its two treatment plants. Wastewater naturally produces corrosive and odorous hydrogen sulfide gas as organic matter decays. Continuous chemical dosing in strategic locations of the collection system, in conjunction with spot slug dosing of caustic soda, inhibits the formation of hydrogen sulfide and other odorous gases.

OC San contracts with service providers to provide chemicals and equipment to continuously dose its trunk sewers with these chemicals. OC San has developed a methodology to dose three different chemicals: ferrous chloride, calcium nitrate, and magnesium hydroxide which work together to regulate the hydrogen sulfide formation. The ratio of the chemicals used can be adjusted based on unit price of the commodity and needs of specific sewer locations. OC San applied for and received a patent for this specific three chemical dosing method.

Evoqua Water Technologies (Evoqua) has a similar patented process using a two-chemical combination of calcium nitrate and magnesium hydroxide for sewer system odor control. Evoqua sells a calcium nitrate chemical called CAN-9 for use in this patented application which is provided to OC San through USP Technologies. Evoqua is the only supplier of the CAN-9 product and requires its use under its own two chemical patent.

RELEVANT STANDARDS

- Protect OC San assets
- 12 or fewer odor complaints per year under normal operating conditions in the collection system
- Ensure the public's money is wisely spent

PROBLEM

OC San intends to utilize its three chemical patent to control odors in its trunk sewers. An alternate calcium nitrate chemical is available which provided an alternate source of supply and is currently cheaper to procure than CAN-9. OC San has contracted with USP Technologies to supply this chemical. The ferrous chloride chemical is supplied by another chemical vendor. USP Technologies is requiring OC San to indemnify them against the possibility of OC San not using ferrous chloride which would cause an infringement of Evoqua's patent.

PROPOSED SOLUTION

OC San will continue to use its own patented three chemical dosing system when the alternate calcium nitrate chemical is used. Provide an indemnification to USP Technologies to obtain alternate calcium nitrate CAN-17 and pilot test the chemical for efficacy in OC San's collection system. General counsel and outside legal counsel specializing in patent law have reviewed the attached agreement.

TIMING CONCERNS

Failing to complete pilot testing of the alternative chemical concentration before contract re-bidding of the calcium nitrate supplier risks higher chemical costs.

RAMIFICATIONS OF NOT TAKING ACTION

Supplier diversity for calcium nitrate supply in the collection system cannot be achieved per OC Sans Strategic Plan Chemical Sustainability Initiative.

PRIOR COMMITTEE/BOARD ACTIONS

N/A

ADDITIONAL INFORMATION

OC San spends approximately \$850,000 annually on calcium nitrate. OC San's patented three chemical system may be more cost effective to use in additional locations. Potential cost savings may be possible by adjusting the dose ratio of the three chemicals with a cheaper calcium nitrate chemical.

CEQA

N/A

FINANCIAL CONSIDERATIONS

This request complies with authority levels of the OC San Purchasing Ordinance. This budgeted item is under the Budget Update- FY 2021-2022 Operations and Maintenance, Operating Expense, Repairs & Maintenance, Page 45. The available funding is sufficient for this action.

ATTACHMENT

The following attachment(s) is viewable online at the OC San website (www.ocsan.gov) with the complete agenda package:

- Indemnification Agreement