



POCONO TOWNSHIP COMMISSIONERS  
SEWER COMMITTEE AGENDA

May 1, 2023 | 6:00 p.m.

**Dial-In Option: 646 558 8656**

**Meeting ID: 892 102 5946**

**Passcode: 18372**

**Zoom Link:**

**<https://us06web.zoom.us/j/8921025946?pwd=Q1VtaFVkVEpRWTUvdIFrSHJ1cE1Td z09>**

**PLEASE NOTE: THE POCONO TOWNSHIP SEWER COMMITTEE MEETING OCCURS IMMEDIATELY PRIOR TO THE REGULARLY SCHEDULED BOARD OF COMMISSIONERS MEETING ON THE FIRST MONDAY OF EACH MONTH.**

**Open Meeting**

**Pledge of Allegiance**

**Roll Call**

**Public Comment**

*Comments are for any issue. Please limit individual comments to 5 minutes to allow time for others wishing to speak and direct all questions and comments to the President.*

**Announcements – None**

**Hearings – None**

**Presentations – None**

**OLD BUSINESS**

1. Motion to approve the minutes of the March 6, 2023 sewer committee meeting. **(Action Item)**
2. Sewer Resolution Update

**NEW BUSINESS**

1. Financial Transactions

2. Appeals

**REPORTS**

1. Public Works Director
  - General Sewer Update.
  - Motion to approve a one-year service contract with Evoqua Water Technologies LLC in the amount of \$1,100.00 per month for Pump Station #5. **(Action Item)**
2. Commissioners
  - Discussion regarding potential sewer service area expansion.
3. Administration
4. Sewer Engineer
  - Update - Sanofi Sanitary Sewer Easement
  - Update - Act 537 Plan
5. Solicitor
  - Tobyhanna Township Act 537 Capacity Request & Equalization (EQ) Tank. **(Possible Action Item)**
  - Update – Amendment to Intermunicipal Sewage Collection & Disposal Services Agreement.
  - General Legal Update.

**Public Comment**

*Please limit individual comments to 5 minutes to allow time for others wishing to speak and direct all questions and comments to the President.*

**Adjournment**

April 5, 2023

Mr. Patrick Briegel  
Pocono Township  
112 Township Drive  
Tannersville, PA 18372  
Phone: (570) 629-1922  
Email: pbriegel@poconopa.gov

**RE: BIOXIDE® FEED AND STORAGE SYSTEM ANNUAL SERVICE CONTRACT  
POCONO TOWNSHIP, PA – PUMP STATION #5 AND  
BRODHEAD CREEK REGIONAL AUTHORITY, PA - WATER TOWER INJECTION POINT AND  
HEADWORKS  
Evoqua Quote No. Q230210LF2r1**

Dear Mr. Briegel,

Evoqua Water Technologies LLC values your business, and we look forward to working with you in the years to come. Evoqua has been asked to maintain and optimize the Bioxide® feed system at PS #5 and the Water Tower Injection Point, along with monitoring the liquid phase sulfide levels at the ARV just prior to the Water Tower Injection Point and monitor the atmospheric sulfide levels at the Brodhead Creek Regional Authority WWTP Headworks. To ensure proper system operation and maintain the desired treatment goals, Evoqua would like to propose the on-going service program listed below.

Services provided for this program would include six seasonal visits during the one-year period following contract acceptance, and shall include:

- Vapor phase monitoring for performance evaluation and feed adjustments
  - A VaporLink® monitor shall be deployed for continuous remote monitoring of atmospheric H<sub>2</sub>S concentrations at the control point. Continuous atmospheric H<sub>2</sub>S data will be made accessible through Evoqua's Link2Site® website, which can be viewed through any device with an internet connection. The VaporLink® will also provide instantaneous alarms should the H<sub>2</sub>S concentration exceed a high level or average alarm set point.
- Liquid phase testing for performance evaluation and feed adjustments, to include sampling for:
  - Dissolved sulfide
  - Residual nitrate
  - pH
  - Temperature
- Optimization of chemical feed rates based on seasonal conditions and vapor phase data
- Routine Maintenance of the Bioxide® feed system
- Repair/Replacement of normal wear components to include:
  - Diaphragms
  - Tubing and barb fittings
  - All *major* replacement parts, such as complete pumps, y-strainers control and calibration cabinet components will be replaced with your prior approval and will be invoiced following the respective visit.
- A report will be issued to Pocono Twp and Brodhead Regional each month noting the following:
  - Beginning feed rate in ml/min, gal/day
  - Adjusted feed rate in ml/min, gal/day
  - Vapor phase data

- Listing of components replaced, repairs made (included every other month)
- General condition of the feed and storage equipment and recommendations (included every other month)

Seasonal visits are important so that seasonal temperature changes and chemical demand changes in the wastewater may be accounted for. System optimization minimizes long periods of time where there may be overfeeding or underfeeding of chemical. It will also lead to cost savings and increased system performance over systems that are not monitored in this manner.

## PRICE

Evoqua is pleased to offer the following price for services for a one-year period, from date of contract acceptance. Pricing shall be subject to annual review following this initial period:

Parts and Service Fee: **\$ 1,100 per month**

Remote Monitoring: **Included in the service fee**

*Terms of payment are NET 30 days from date of invoice. These prices do not include any applicable taxes.*

If additional sampling/service visits outside the scope of this proposal are required at the request of Pocono Township or Brodhead Regional, an additional invoice will be issued for **\$2,200** - equal to the cost of an unscheduled visit. Also, additional components outside the scope of regular service shall be invoiced at the time of services.

*Terms of payment are NET 30 days from date of invoice. These prices do not include any applicable taxes.*

This price associated with this quote will remain in effect for a period of thirty (30) days. If we are not in receipt of an order by the end of this firm price period, we reserve the right to modify the prices quoted.

The attached Terms and Conditions are considered part of this proposal and shall prevail.

I hope this proposal meets with your approval and we look forward to working with you on this project. If you have any questions, please feel free to contact me at (302) 690-0805.

**Evoqua Water Technologies LLC**

*Tom Patton*

Tom Patton  
Technical Sales Representative

**RE: BIOXIDE® FEED AND STORAGE SYSTEM ANNUAL SERVICE CONTRACT  
POCONO TOWNSHIP, PA – PUMP STATION #5 AND  
BRODHEAD CREEK REGIONAL AUTHORITY, PA - WATER TOWER INJECTION POINT AND  
HEADWORKS  
Evoqua Quote No. Q230210LF2r1**

Evoqua will process your order when we receive acceptance of this proposal, by signing below and returning to [municipalservices@evoqua.com](mailto:municipalservices@evoqua.com) or via fax to: (941) 359-7985.

Company Name: \_\_\_\_\_

This \_\_\_\_ day of \_\_\_\_\_ Month \_\_\_\_\_ Year

By: \_\_\_\_\_

Title: \_\_\_\_\_

P.O. Number: \_\_\_\_\_

## EVOQUA WATER TECHNOLOGIES LLC

### Standard Terms of Sale

1. **Applicable Terms.** These terms govern the purchase and sale of equipment, products, related services, leased products, and media goods if any (collectively herein "Work"), referred to in Seller's proposal ("Seller's Documentation"). Whether these terms are included in an offer or an acceptance by Seller, such offer or acceptance is expressly conditioned on Buyer's assent to these terms. Seller rejects all additional or different terms in any of Buyer's forms or documents.

2. **Payment.** Buyer shall pay Seller the full purchase price as set forth in Seller's Documentation. Unless Seller's Documentation specifically provides otherwise, freight, storage, insurance and all taxes, levies, duties, tariffs, permits or license fees or other governmental charges relating to the Work or any incremental increases thereto shall be paid by Buyer. If Seller is required to pay any such charges, Buyer shall immediately reimburse Seller. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Seller with a valid exemption certificate or permit and indemnify, defend and hold Seller harmless from any taxes, costs and penalties arising out of same. All payments are due within 30 days after receipt of invoice. Buyer shall be charged the lower of 1 ½% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of Seller's reasonable costs (including attorneys' fees) of collecting amounts due but unpaid. All orders are subject to credit approval by Seller. Back charges without Seller's prior written approval shall not be accepted.

3. **Delivery.** Delivery of the Work shall be in material compliance with the schedule in Seller's Documentation. Unless Seller's Documentation provides otherwise, delivery terms are ExWorks Seller's factory (Incoterms 2010). Title to all Work shall pass upon receipt of payment for the Work under the respective invoice. Unless otherwise agreed to in writing by Seller, shipping dates are approximate only and Seller shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer or Buyer's customer if Seller fails to meet the specified delivery schedule.

4. **Ownership of Materials and Licenses.** All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data, software and other documents or information prepared or disclosed by Seller, and all related intellectual property rights, shall remain Seller's property. Seller grants Buyer a non-exclusive, non-transferable license to use any such material solely for Buyer's use of the Work. Buyer shall not disclose any such material to third parties without Seller's prior written consent. Buyer grants Seller a non-exclusive, non-transferable license to use Buyer's name and logo for marketing purposes, including but not limited to, press releases, marketing and promotional materials, and web site content.

5. **Changes.** Neither party shall implement any changes in the scope of Work described in Seller's Documentation without a mutually agreed upon change order. Any change to the scope of the Work, delivery schedule for the Work, any Force Majeure Event, any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Seller to an equitable adjustment in the price and time of performance.

6. **Force Majeure Event.** Neither Buyer nor Seller shall have any liability for any breach or delay (except for breach of payment obligations) caused by a Force Majeure Event. If a Force Majeure Event exceeds six (6) months in duration, the Seller shall have the right to terminate the Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed prior to the date of termination. "**Force Majeure Event**" shall mean events or circumstances that are beyond the affected party's control and could not reasonably have been easily avoided or overcome by the affected party and are not substantially attributable to the other party. Force Majeure Event may include, but is not limited to, the following circumstances or events: war, act of foreign enemies, terrorism, riot, strike, or lockout by persons other than by Seller or its sub-suppliers, natural catastrophes or (with respect to on-site work), unusual weather conditions.

7. **Warranty.** Subject to the following sentence, Seller warrants to Buyer that the (i) Work shall materially conform to the description in Seller's Documentation and shall be free from defects in material and workmanship and (ii) the Services shall be performed in a timely and workmanlike manner. Determination of suitability of treated water for any use by Buyer shall be the sole and exclusive responsibility of Buyer. The foregoing warranty shall not apply to any Work that is specified or otherwise demanded by Buyer and is not manufactured or selected by Seller, as to which (i) Seller hereby assigns to Buyer, to the extent assignable, any warranties made to Seller and (ii) Seller shall have no other liability to Buyer under warranty, tort or any other legal theory. The Seller warrants the Work, or any components thereof, through the earlier of (i) eighteen (18) months from delivery of the Work or (ii) twelve (12) months from initial operation of the Work or ninety (90) days from the performance of services (the "Warranty Period"). If Buyer gives Seller prompt written notice of breach of this warranty within the Warranty Period, Seller shall, at its sole option and as Buyer's sole and exclusive remedy, repair or replace the subject parts, re-perform the Service or refund the purchase price. Unless otherwise agreed to in writing by Seller, (i) Buyer shall be responsible for any labor required to gain access to the Work so that Seller can assess the available remedies and (ii) Buyer shall be responsible for all costs of installation of repaired or replaced Work. If Seller determines that any claimed breach is not, in fact, covered by this warranty, Buyer shall pay Seller its then customary charges for any repair or replacement made by Seller. Seller's warranty is conditioned on Buyer's (a) operating and maintaining the Work in accordance with Seller's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to Seller. Seller's warranty does not cover (i) damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by Seller) and (ii) media goods (such as, but not limited to, resin, membranes, or granular activated carbon media) once media goods are installed. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE SELLER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION BELOW. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

8. **Indemnity.** Seller shall indemnify, defend and hold Buyer harmless from any claim, cause of action or liability incurred by Buyer as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Seller's negligence. Seller shall have the sole authority to direct the defense of and settle any indemnified claim. Seller's indemnification is conditioned on Buyer (a) promptly, within the Warranty Period, notifying Seller of any claim, and (b) providing reasonable cooperation in the defense of any claim.

9. **Assignment.** Neither party may assign this Agreement, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other party; provided, however, the Seller may assign its rights and obligations under these terms to its affiliates or in connection with the sale or transfer of the Seller's business and Seller may grant a security interest in the Agreement and/or assign proceeds of the agreement without Buyer's consent.

10. **Termination.** Either party may terminate this agreement, upon issuance of a written notice of breach and a thirty (30) day cure period, for a material breach (including but not limited to, filing of bankruptcy, or failure to fulfill the material obligations of this agreement). If Buyer suspends an order without a change order for ninety (90) or more days, Seller may thereafter terminate this Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed, whether delivered or undelivered, prior to the date of termination.

11. **Dispute Resolution.** Seller and Buyer shall negotiate in good faith to resolve any dispute relating hereto. If, despite good faith efforts, the parties are unable to resolve a dispute or claim arising out of or relating to this Agreement or its breach, termination, enforcement, interpretation or validity, the parties will first seek to agree on a forum for mediation to be held in a mutually agreeable site. If the parties are unable to resolve the dispute through mediation, then any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Pittsburgh, Pennsylvania before three arbitrators who are lawyers experienced in the discipline that is the subject of the dispute and shall be jointly selected by Seller and Buyer. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The Arbitrators shall issue a reasoned decision of a majority of the arbitrators, which shall be the decision of the panel. Judgment may be entered upon the arbitrators' decision in any court of competent jurisdiction. The substantially prevailing party as determined by the arbitrators shall be reimbursed by the other party for all costs, expenses and charges, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with the arbitration. For any order shipped outside of the United States, any dispute shall be referred to and finally determined by the International Center for Dispute Resolution in accordance with the provisions of its International Arbitration Rules, enforceable under the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and the governing language shall be English.

12. **Export Compliance.** Buyer acknowledges that Seller is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Work provided under this Agreement, including any export license requirements. Buyer agrees that such Work shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Seller of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

13. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE WORK, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ALL WARRANTY CLAIMS OR FOR ANY BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE CONTRACT, SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE WORK. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

14. **Rental Equipment / Services.** Any leased or rented equipment ("Leased Equipment") provided by Seller shall at all times be the property of Seller with the exception of certain miscellaneous installation materials purchased by the Buyer, and no right or property interest is transferred to the Buyer, except the right to use any such Leased Equipment as provided herein. Buyer agrees that it shall not pledge, lend, or create a security interest in, part with possession of, or relocate the Leased Equipment. Buyer shall be responsible to maintain the Leased Equipment in good and efficient working order. At the end of the initial term specified in the order, the terms shall automatically renew for the identical period unless canceled in writing by Buyer or Seller not sooner than three (3) months nor later than one (1) month from termination of the initial order or any renewal terms. Upon any renewal, Seller shall have the right to issue notice of increased pricing which shall be effective for any renewed terms unless Buyer objects in writing within fifteen (15) days of issuance of said notice. If Buyer timely cancels service in writing prior to the end of the initial or any renewal term this shall not relieve Buyer of its obligations under the order for the monthly rental service charge which shall continue to be due and owing. Upon the expiration or termination of this Agreement, Buyer shall promptly make any Leased Equipment available to Seller for removal. Buyer hereby agrees that it shall grant Seller access to the Leased Equipment location and shall permit Seller to take possession of and remove the Leased Equipment without resort to legal process and hereby releases Seller from any claim or right of action for trespass or damages caused by reason of such entry and removal.

15. **Miscellaneous.** These terms, together with any Contract Documents issued or signed by the Seller, comprise the complete and exclusive statement of the agreement between the parties (the "Agreement") and supersede any terms contained in Buyer's documents, unless separately signed by Seller. No part of the Agreement may be changed or cancelled except by a written document signed by Seller and Buyer. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Agreement. To the extent the Agreement is considered a subcontract under Buyer's prime contract with an agency of the United States government, in case of Federal Acquisition Regulations (FARs) flow down terms, Seller will be in compliance with Section 44.403 of the FAR relating to commercial items and those additional clauses as specifically listed in 52.244-6, Subcontracts for Commercial Items (OCT 2014). If any of these terms is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. The Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions. Both Buyer and Seller reject the applicability of the United Nations Convention on Contracts for the international sales of goods to the relationship between the parties and to all transactions arising from said relationship.