

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

|   |   |                              |
|---|---|------------------------------|
| <b>CITIZENS FOR PENNSYLVANIA'S<br/>FUTURE</b>                                       | : |                              |
|   | : |                              |
|   | : |                              |
| <b>Plaintiff</b>  | : |                              |
|   | : |                              |
| <b>COMMONWEALTH OF<br/>PENNSYLVANIA, DEPARTMENT OF<br/>ENVIRONMENTAL PROTECTION</b> | : |                              |
|   | : |                              |
|   | : |                              |
| <b>Intervenor Plaintiff</b>   | : | <b>CA No.: 3:14-CV-00100</b> |
| <b>v.</b>   | : |                              |
|   | : | <b>(Judge Kim R. Gibson)</b> |
| <b>CONFLUENCE BOROUGH<br/>MUNICIPAL AUTHORITY</b>                                   | : |                              |
|   | : |                              |
|   | : |                              |
| <b>Defendant</b>  | : |                              |

**CONSENT DECREE**

This Consent Decree is entered by and between the parties on this 15<sup>th</sup> day of December, 2016.

WHEREAS, on May 15, 2014, Plaintiff Citizens for Pennsylvania's Future ("PennFuture") initiated this action by filing a Complaint against Defendant Confluence Borough Municipal Authority ("Authority") pursuant to Section 505 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1365, and Section 601 of The Pennsylvania Clean Streams Law (Clean Streams Law), 35 P.S. § 691.601, for violations of the Clean Water Act, 33 U.S.C. §§ 1251- 1387, and The Clean Streams Law, 35 P.S. §§ 691.1- 691.1001, relating to the operation of publicly owned treatment works located in Confluence Borough, Pennsylvania.

### **The Parties**

WHEREAS, Plaintiff PennFuture is a public interest membership organization that maintains an office at 200 First Avenue, Suite 200, Pittsburgh, Pennsylvania 15222. Plaintiff's members are "citizens" and "persons having an interest which is or may be adversely affected" under the Clean Water Act, 33 U.S.C. § 1365(g), and the Pennsylvania Clean Streams Law, 35 P.S. § 691.601(c).

WHEREAS, Defendant Authority is a municipal authority organized under the Municipal Authorities Act, 53 P.S. §§ 5601 – 5623, that maintains a business mailing address of PO Box 6, Confluence, Pennsylvania 15424.

WHEREAS, Intervenor Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), is the agency of the Commonwealth vested with the duty and authority to administer and enforce The Pennsylvania Clean Streams Law, 35 P.S. §§ 691.101 - 691.1001, and the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. 1535 (1965), No. 537, as amended, 35 P.S. §§ 750.1 750.20a ("Sewage Facilities Act"). The Department maintains a Regional Office that has a mailing address of 400 Waterfront Drive, Pittsburgh, PA 15222.

WHEREAS, on October 4, 2016, the Department filed a Complaint in Intervention in this matter.

### **Background**

WHEREAS, the Defendant is responsible for operating and maintaining a sewage treatment plant ("Treatment Plant") and associated collection and conveyance lines that serve the residents of the Confluence Borough ("Borough"), along with a Federally operated Ranger Station and Campground in Henry Clay Township. The collection and conveyance system

consists of about 25,000 feet of pipe, of which about 16,000 feet is made up of pre-1970 terra cotta sewer lines. The collection and conveyance system is a sanitary sewer system that was designed and permitted to convey only sanitary sewage and industrial waste.

WHEREAS, the Treatment Plant has a design capacity of 136,500 gallons per day, but daily flow periodically exceeds design capacity during wet weather periods because stormwater and stream flow infiltrates the Borough's collection and conveyance system.

WHEREAS, the Defendant discharges effluent from the Treatment Plant through Outfall 001 under authority of National Pollutant Discharge Elimination System ("NPDES") Permit No. PA0038164, issued by the Department pursuant to its delegation of authority under the Clean Water Act, 33 U.S.C. § 1342(b) and its authority under Sections 5, 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.201 and 691.202.

WHEREAS, Outfall 001 discharges to a portion of the Youghiogheny River that has a protected use under the Pennsylvania Clean Streams Law of High Quality – Cold Water Fishes ("HQ-CWF"), 25 Pa. Code § 93.9v.

WHEREAS, the Defendant timely filed an application to renew NPDES Permit No. PA0038164, which application is pending before the Department.

WHEREAS, the Defendant's NPDES Permit No. PA0038164 expired by its terms on July 31, 2013, but its term has been administratively extended pursuant to 25 Pa. Code § 92a.7(b) and (c).

WHEREAS, there exist two outfalls, known as Outfalls 002 and 004, both of which are part of the sewage collection and conveyance system that serves the Borough. During periods of wet weather and high flow, there are periodic discharges of untreated sewage from these outfalls (referred to as sanitary sewer overflows ("SSOs")) and into the waters of the Commonwealth.

NPDES Permit PA0038164 does not authorize an SSO discharge from either Outfall 002 or Outfall 004. Outfall 002 discharges to a portion of the Youghiogheny River that has a protected use under the Pennsylvania Clean Streams Law of High Quality – Cold Water Fishes, 25 Pa. Code § 93.9v. Outfall 004 discharges to a portion of the Casselman River that has a protected use under the Pennsylvania Clean Streams Law of Warm Water Fishes, 25 Pa. Code § 93.9v. The Casselman River empties into the Youghiogheny River.

WHEREAS, according to the Defendant, there exists another Outfall 003 (located along Laurel Hill Creek), which has been disconnected from the collection and conveyance system that serves the Borough.

WHEREAS, Plaintiff's Complaint alleges that Defendant has (a) violated and continues to violate the Pennsylvania Clean Streams Law and Federal Clean Water Act by, *inter alia*, discharging untreated and inadequately treated sewage from its collection and treatment system into waters of the Commonwealth without authorization of any permit and (b) violated the Pennsylvania Clean Streams Law for failing to submit complete, accurate and timely Chapter 94 Annual Waste Load Management reports.

WHEREAS, under Section 5 of the Sewage Facilities Act, 35 P.S. § 750.5, each municipality within the Commonwealth must submit to the Department an Official Plan ("Act 537 Plan") that provides for adequate sewage treatment facilities that will prevent the discharge of untreated or inadequately treated sewage or other waste and provide for the safe and sanitary treatment of sewage or other waste.

WHEREAS, on August 15, 2014, the Borough submitted a draft revised Act 537 Plan to the Department as an update to a previously submitted 2010 Act 537 Plan.

WHEREAS, on July 17, 2015, the Borough submitted a complete Act 537 Plan to the Department.

WHEREAS, the Act 537 Plan proposes a plan to engineer and construct a new pressure sewage collection and conveyance system for the Borough that would replace the existing gravity flow system in order to eliminate SSOs and maintain compliance with effluent limitations in NPDES Permit No. PA0038164.

WHEREAS, the Act 537 Plan proposes converting the existing sewage gravity flow system into a separate stormwater collection and conveyance system.

WHEREAS, on October 9, 2015, the Department approved the Borough's Act 537 Plan. Under 35 P.S. § 750.10, and 25 Pa. Code §§71.11 and 71.31(f), the Borough is under a legal obligation to implement the approved Act 537 Plan.

WHEREAS, under 35 P.S. §§ 691.201 and 691.202 and 25 Pa. Code §92a.47(c), the Defendant is under a legal obligation to eliminate SSOs from its conveyance and collection system.

WHEREAS the Defendant has agreed to implement the Borough's approved Act 537 Plan, which is designed to eliminate SSOs from the conveyance and collection system owned and operated by the Defendant and otherwise correct violations at the Defendant's Treatment Plant.

WHEREAS, Plaintiff, Defendant, and the Department (collectively, the Parties) have negotiated a settlement that resolves the violations alleged in the Complaint and the Complaint in Intervention, and which, when implemented, is intended to eliminate the unauthorized discharge of untreated and inadequately treated sewage from Defendant's conveyance and collection

system, and thereby protect and improve the water quality of the Youghiogheny and Casselman Rivers.

WHEREAS, the Parties agree, and the Court hereby finds, that settlement of the claims alleged in the Complaint and the Complaint in Intervention, as embodied in this Consent Decree, without resort to further litigation, is fair, equitable and in the best interests of the public and the environment.

NOW THEREFORE, without admission of any facts not set forth in this settlement agreement, before the taking of any testimony, and without adjudicating issues of fact or law, it is hereby ADJUDGED, ORDERED, and DECREED as follows:

**Jurisdiction and Venue**

1. **Jurisdiction.** This Court has subject matter jurisdiction over the claims set forth in the Complaint and the Complaint in Intervention pursuant to 33 U.S.C. § 1365(a) (Clean Water Act citizen suit provision), 28 U.S.C. § 1331 (Federal question jurisdiction), and 28 U.S.C. § 1367 (supplemental jurisdiction).

2. **Venue.** Venue is proper in the Western District of Pennsylvania pursuant to 33 U.S.C. § 1365(c) and 28 U.S.C. § 1391(b) because the source of the violations is located in this District.

**Compliance Obligations**

3. Within 180 days after the Date of Entry of this Consent Decree into the docket, the Defendant shall submit to the Department a complete and accurate application that complies with all applicable statutory and regulatory requirements for a Water Quality Management Part II (“Part II”) Permit for a plan to engineer and construct a new pressure sewage collection and conveyance system for the Borough that would replace the existing gravity flow system in order

to eliminate SSOs and maintain compliance with effluent limitations in NPDES Permit No. PA0038164 (hereinafter “the Project”). The Project shall include installation of a grinder pump, concrete vault and discharge lateral for every customer. The vault and grinder pump shall be located such that a gravity flow connection can be made between the home and grinder pump. The application shall include a sequenced construction plan that details how the Defendant will switch over from the existing collection and conveyance system to the new collection and conveyance system. After the initial application has been submitted, the Defendant shall promptly and no more than 60 days after receipt of any comment letter from the Department, or such shorter or longer time as the Department may specify but in no event greater than 90 days, submit any revisions or additional information needed by the Department to process the Defendant’s Part II Permit application.

4. Within 90 days of the Department’s issuance of the Part II Permit, the Defendant shall submit a complete and accurate application for funding with the Pennsylvania Infrastructure Investment Authority (“PENNVEST”) to finance construction of the Project. In the event that PENNVEST denies or defers action on Defendant’s initial application the Defendant will, within 60 days of PENNVEST’s denial or deferral, resubmit its application so that PENNVEST may consider funding the Project at its next meeting.

5. Within 365 days after the Department’s Part II Permit issuance, the Defendant shall advertise for bids for construction of the Project.

6. Within 60 days after advertising bids, the Defendant shall award bids for construction of the Project.

7. Within 90 days after awarding bids for construction, the Defendant shall adopt regulations that will require all users that will be served by the Project to connect to the Project

within 180 days after the collection and conveyance system becomes fully operational.

8. Within 365 days after awarding bids for construction of the Project, the Defendant shall substantially complete construction of the Project such that the collection and conveyance system is fully operational (hereinafter “Completion Date”). Within 30 days after the Completion Date, Defendant shall submit a certification to the Department and Plaintiff, dated and sealed by its engineer, affirming that the system is fully operational and notify all users that the collection and conveyance system is fully operational.

9. Within 240 days after the Completion Date, the Defendant shall have taken such actions as necessary to cease the discharge of untreated and inadequately treated sewage from its Treatment Plant and collection and conveyance system into waters of the Commonwealth in excess of the effluent limitations contained in NPDES Permit No. PA0038164, and in violation of the Clean Water Act and The Clean Streams Law, as alleged in the Complaint and the Complaint in Intervention (hereinafter the “Compliance Date”), including actions as necessary to connect users to the Project such as initiating legal action to compel users to connect to the Project.

10. Within 30 days after the Compliance Date, the Defendant shall submit a report to the Department and Plaintiff certifying compliance with Paragraph 9. If the Defendant has been unable to get all users connected to the Project by the Compliance Date, the report shall identify those users who are not connected, explain why they are not connected, and describe what measures Defendant has taken to obtain their connection. Defendant shall continue submitting reports every 60 days until all users have been connected.

11. Upon execution of this Consent Decree and continuing until all users have been connected to the Project, the Defendant shall inspect Outfalls 002 and 004 at least monthly for



evidence of overflow activity, and submit a report of those inspection results to the Department with each Semiannual Progress Report submitted under Paragraph 14 of this Consent Decree. The Defendant shall install a device at Outfalls 002 and 004 that will detect whether the location has overflowed since the prior inspection. The Defendant shall report to the Department the occurrence of each SSO verbally within 48 hours and in writing within five days.

12. Within 90 days after certifying compliance with Paragraph 9, the Defendant shall develop and implement a program of semi-annual inspections to ensure that all sewage in the Borough is being discharged to the new collection and treatment system, and that there are no illegal discharges of sewage into the old system that, under the Project, is to be converted to a stormwater collection and conveyance system. The inspection program shall include an inspection of Outfalls 002 and 004 during dry weather and peak flow conditions. The Defendant shall submit its inspection reports to the Department for a period of two years after the Compliance Date.

13. Defendant shall submit complete, accurate, and timely Chapter 94 Annual Wasteload Management Reports.

14. Progress Reports to the Department and Plaintiff. The Defendant shall submit written semiannual progress reports ("Semiannual Progress Report") to the Department and Plaintiff for the periods from January to June and from July to December to the address set forth in Paragraph 22, which details its activities to comply with the obligations in this Consent Decree. Each Semiannual Progress Report shall be submitted within 45 days after the end of the six month period, and shall begin with the January to June, 2016 period. The Semiannual Progress Reports shall include, but not be limited to:

a. A description of the actions, including sampling and monitoring, that have been taken toward achieving compliance with this Consent Decree. This shall include an updated data table reflecting the work accomplished to date, until the work required by this Consent Decree is completed.

b. A description of all activities scheduled for the next six months.

c. A description of any problems or delays encountered or anticipated regarding performance of the activities required by this Consent Decree.

15. Reports to PennFuture. Contemporaneous with any submission that it makes to the Department, the Defendant shall provide to Plaintiff (i) a copy of any plans, drawings, applications, letters and other submissions it makes to the Department regarding matters addressed by this Consent Decree, and (ii) at least 14 days written notice of any meeting scheduled with the Department to discuss obligations or other matters covered by this Consent Decree.

16. Additional Information. If the Department requires additional information to review any submission required by this Consent Decree, the Defendant shall provide the requested information within the time set forth in the Department's notice, which time shall be reasonable.

17. Permit Processing and Challenges. Notwithstanding the provisions of Paragraph 26, the Parties agree that any challenges to the Department's issuance or denial of a permit in response to a permit application submitted by the Defendant under this Consent Decree must be filed with the Environmental Hearing Board, the tribunal established by Pennsylvania statute to review all actions of the Pennsylvania Department of Environmental Protection, Environmental Hearing Board Act, Act of July 13, 1988, P.L., 530, 35 P.S. § 7514.

18. Stipulated Civil Penalties

a. In the event the Defendant fails to comply in a timely manner with any term or provisions of this Consent Decree, the Defendant shall be in violation of this Consent Decree and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$200.00 per day for each violation of this Consent Decree. This stipulated civil penalty provision shall apply to Paragraphs 3 and 4 at all times. This stipulated civil penalty provision shall apply to Paragraphs 6 through 12 only after Confluence complies with Paragraph 5 by advertising for bids for construction of the Project.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded to the Department, by corporate check or the like and made payable to the Clean Streams Fund and sent to the Department's Compliance Specialist at the address set forth in Paragraph 22 herein.

c. Any payment under this paragraph shall neither waive the Defendant's duty to meet its obligations under this Consent Decree nor preclude Plaintiff and the Department from commencing an action to compel the Defendant's compliance with the terms and conditions of this Consent Decree. The payment resolves only the Defendant's liability for civil penalties arising from the violations of this Consent Decree for which payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

19. Liability of Operator. The Defendant shall be liable for any violations of the Consent Decree, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. The Defendant also shall be liable for any violation of this Consent Decree caused by, contributed to, or allowed by its successors and assigns unless the Department approves a transfer pursuant to Paragraph 20.

20. Transfer of Site.

a. The duties and obligations under this Consent Decree shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the Treatment Plant, collection and conveyance system or any parts thereof.

b. If the Defendant intends to transfer any legal or equitable interest in the Treatment Plant or collection and conveyance system which is affected by this Consent Decree, the Defendant shall serve a copy of this Consent Decree upon the prospective transferee of the legal and equitable interest at least 30 days prior to the contemplated transfer and shall simultaneously inform the Southwest Regional Office of the Department and Plaintiff of such intent.

c. The Department in its sole discretion may agree to modify or terminate the Defendant's duties and obligations under this Consent Decree upon transfer of the Treatment Plant and collection and conveyance system. The Defendant waives any right that it may have to challenge the Department's decision in this regards.

21. Force Majeure.

a. In the event that the Defendant is prevented from complying in a timely manner with any time limit imposed in this Consent Decree solely because of a strike, fire, flood, act of God, or other circumstances beyond the Defendant's control and which the Defendant, by the exercise of all reasonable diligence, is unable to prevent, then the Defendant may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Decree shall not constitute circumstances beyond the Defendant's control. The Defendant's economic inability to comply with any of the obligations of this Consent Decree shall not be grounds for any extension of time.

b. The Defendant shall only be entitled to the benefits of this paragraph if it notifies the Department within 5 working days by telephone and within 10 working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well, as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by the Defendant to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within 10 working days of its submission. The Defendant's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by the Defendant and other information available to the Department. In any subsequent litigation, the Defendant shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

22. Correspondence. All communications regarding this Consent Decree shall be made to the following:

For Plaintiff:

George Jugovic, Jr., Esq.  
Citizens for Pennsylvania's Future  
200 First Avenue, Suite 200  
Pittsburgh, Pennsylvania 15222  
jugovic@pennfuture.org

For Defendant:

John Tressler, Chairman  
Confluence Borough Municipal Authority  
PO Box 6  
Confluence, Pennsylvania 15424  
confluenceborough1@verizon.net

Robert I. Boose, II, Esq.  
203 West Union Street  
Suite 100  
Somerset, Pennsylvania 15501  
rboose@wpia.net

Kevin J. Garber, Esq.  
Babst, Calland, Clements and Zomnir, P.C.  
Two Gateway Center, 6<sup>th</sup> Floor  
603 Stanwix Street  
Pittsburgh, Pennsylvania 15222  
kgarber@babstcalland.com

For Plaintiff Intervenor:

Compliance Specialist – Clean Water Program  
Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, Pennsylvania 15222

23. Lodging and Petition for Stay. Within 10 days after execution, the parties will lodge this Consent Decree with the Court along with a joint motion for stay of the proceedings based upon a settlement having been reached. In their motion, the parties shall explain their intention to have this Consent Decree entered as an order of the Court following expiration of the 45- day period for the possible intervention of the US Government.

24. Government Comment or Intervention; Entry. Within 10 days after execution, Plaintiff and the Department will, pursuant to 33 U.S.C. § 1365(c)(3), serve this Consent Decree on the Attorney General of the United States and the Administrator of the United States Environmental Protection Agency. If the United States does not comment or intervene within 45

days of receipt, the Parties shall submit this Consent Decree to the Court together with a joint motion for its entry as an Order of this Court. If the United States comments or intervenes in this proceeding, the Parties will work together with the United States determine whether this matter can still be resolved without further litigation. At any time following comment or intervention by the United States, one or more of the parties may petition the Court to lift the stay of proceedings.

25. Costs of Litigation. Pursuant to 33 U.S.C. § 1365(d), the Court, in issuing any final order in a citizen suit under the Clean Water Act, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate. In settlement of Plaintiffs' claims for attorney fees and costs associated with this litigation, including expert witnesses and consultants, Defendant will submit to Plaintiff an amount of thirty thousand dollars (\$30,000.00) Said amount shall be payable in installments of \$1000.00 per month on or before the final day of each month until the full amount has been paid. Payments shall be made by check payable to "Citizens for Pennsylvania's Future" and sent by first class mail, postage prepaid to 610 North Third Street, Harrisburg, PA 17101, or by direct deposit if so arranged by the parties. If Defendant fails to make timely payment, Plaintiff may file a motion for fees and costs with the Court, and may seek their full fees and costs in this proceeding up to and including such motion. In no event shall the Department be responsible for any attorney fees or costs of litigation incurred by any other party in this matter.

26. Continuing Jurisdiction. The Parties agree that the Court shall maintain jurisdiction over this matter to enforce the terms of this Consent Decree and for the purpose of

adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree.

27. Sovereign Immunity. Defendant will not assert sovereign immunity to prevent enforcement of this Consent Decree.

28. Severability. If any provision of this Consent Decree is declared invalid or unenforceable, the remaining provisions shall continue in effect.

29. Entire Agreement. This Consent Decree constitutes and contains the entire agreement among the parties with respect to the subject matter hereof and merges and supersedes prior negotiations, understandings, agreements, representations and warranties among the Parties.

30. Modification. This Consent Decree may not be amended or modified except by written order of this Court. Any modification of this Consent Decree by the Parties shall be in writing and approved by the Court before it will be deemed effective.

31. Captions. The captions or headings of the Paragraphs of this Consent Decree (for example, the heading of “Captions”) are for convenience of reference only and in no way define, limit, or affect the scope or substance of any provision of this Consent Decree.

32. No Waiver. The failure of any party to seek redress for violation of, or to insist upon strict performance of, any provision of this Consent Decree, shall not be a waiver of that provision by that party or estop that party from asserting fully any and all of its rights under this Consent Decree, or as to any subsequent violation of this Consent Decree.

33. Effect of Settlement. In consideration of Defendant’s obligations under this Consent Decree, Plaintiff for itself and its officers, directors, employees, members, agents, counsel, representatives, successors and assigns hereby remises, releases and forever discharges



the Defendant and its respective officers, directors, council members, employees, agents, counsel, insurance carriers, representatives, successors and assigns of and from any and all claims, manner of actions, causes of action, suits, debts, liabilities, damages, penalties, costs, claims, expenses, attorneys' fees, claims and demands whatsoever in nature, whether in law, equity, statute or otherwise, which Plaintiff has asserted in the Complaint filed by the Plaintiff for the dates and periods identified in the Complaint. In addition, in consideration of Defendant's obligations under this Consent Decree, this Consent Decree resolves civil claims asserted by the Department in its Complaint in Intervention.

34. Defendant shall at all times comply with the Clean Water Act and the regulations promulgated thereunder, and The Clean Streams Law and the regulations promulgated thereunder.

35. This Consent Decree in no way affects or relieves Defendant of any responsibility to comply with any Federal, state, or local law or regulation.

36. Defendant is responsible for archiving and maintaining compliance with all applicable Federal and state laws, regulations, and permits, and compliance with this Consent Decree shall be no defense to any actions commenced pursuant to such laws, regulations, or permits, except as otherwise expressly specified in the Consent Decree.

37. This Consent Decree is not and shall not be construed as a permit issued pursuant to Section 402 of the Clean Water, 33 U.S.C. § 1342, state law, or local law, or as a modification of any existing permit so issued.

38. This Consent Decree shall not in any way relieve Defendant of: its obligation to comply with any applicable Federal, state, or local law or regulation; its obligation to obtain a

permit for the Conveyance and Treatment System or any portion thereof or any other facilities; or of its obligation to comply with the requirements of any NPDES permit.

39. Defendant shall comply with any new permit, or modification of existing permits in accordance with applicable Federal and state laws and regulations.

40. Plaintiff and the Department do not warrant or aver in any manner that Defendant's compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, The Clean Streams Law, or with the NPDES Permit, irrespective of the Department's review or approval of any plans, reports, policies, or procedures formulates pursuant to this Consent Decree, all applicable permits, the Clean Water Act, and the regulations promulgated under that Act, as well as The Clean Streams Law and the regulations promulgated under that law.

41. This Consent Decree does not limit or affect the rights of the Parties as against any third party. As long as the Defendant complies with the terms and conditions of this Consent Decree, Plaintiff, on behalf of itself and its officers, directors, employees, members, agents, counsel, representatives, successors, and assigns, hereby agrees not to commence any claim or action against, nor seek civil penalties or any other relief from, the Defendant for any ongoing or continuing overflows from Outfalls 002 and 004, or for any exceedances of effluent limitations of Defendant's NPDES permit at Outfall 001 caused by wet weather conditions.

42. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

43. Except for the civil claims resolved pursuant to Paragraph 33, this Consent Decree shall not limit any authority of the Department under the Clean Water Act, The Clean

Streams Law, or any applicable statute, law, or regulation, including the authority to seek information from Defendant or to seek access to the property of Defendant.

44. The Department reserves all remedies available to it for violations of the Clean Water Act and The Clean Streams Law by Defendant which are not alleged in the Complaint and the Complaint in Intervention, and for violations of the Clean Water Act, The Clean Streams Law and/or other similar statutes by Defendant which occur after the lodging of this Consent Decree.

45. This Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Water Act and The Clean Streams Law.

46. Nothing in this Consent Decree shall be construed to limit the authority of the Department to undertake any action against any person, including the Defendant, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

47. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other Federal, state, or local law or regulation.

48. The effective date of this Consent Decree shall be the Date of Entry of this Consent Decree.

49. The Parties agree and acknowledge that final approval by the Department and entry of this Consent Decree is subject to notice of the lodging of this Consent Decree, and opportunity for public comment. The parties also recognize the right of the Department to withdraw or withhold consent if the comments disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate.

50. Termination. The obligations of this Consent Decree shall terminate 30 months after the submission of the final report, pursuant to Paragraph 10, which demonstrates that all users have been physically connected to the newly installed pressure sewage collection and conveyance system or December 31, 2022, whichever occurs first.

51. In view of the obligations imposed by this Consent Decree, the Complaint and Complaint in Intervention are dismissed.

52. Counterparts. This Consent Decree may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Delivery of an executed counterpart of this Consent Decree by facsimile, or by electronically scanning and emailing an executed counterpart signature page, while not specifically required, will be acknowledged as being equally as effective as delivery of a manually executed counterpart of this Consent Decree. The use of a signature page received by facsimile, or through an electronic scan and email, shall not affect the validity, enforceability, or binding effect of this Consent Decree.

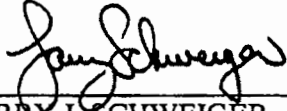
53. Certification. The undersigned representatives of each party certify that they are fully authorized by the party (or parties) they represent to consent to this Consent Decree.

DATED AND ENTERED AS AN ORDER OF THE COURT  
THIS 16<sup>th</sup> DAY OF December, 2016.



UNITED STATES DISTRICT JUDGE  
~~MIDDLE~~ DISTRICT OF PENNSYLVANIA  
WESTERN

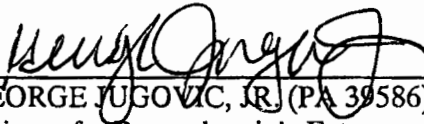
FOR PLAINTIFF, CITIZENS FOR PENNSYLVANIA'S FUTURE:



\_\_\_\_\_  
LARRY J. SCHWEIGER  
President

12-14-16

\_\_\_\_\_  
Date

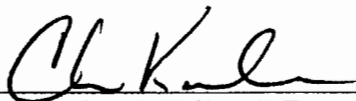


\_\_\_\_\_  
GEORGE JUGOVIC, JR. (PA 39586)  
Citizens for Pennsylvania's Future  
200 First Avenue, Suite 200  
Pittsburgh, Pennsylvania 15222  
jugovic@pennfuture.org

12-14-16

\_\_\_\_\_  
Date

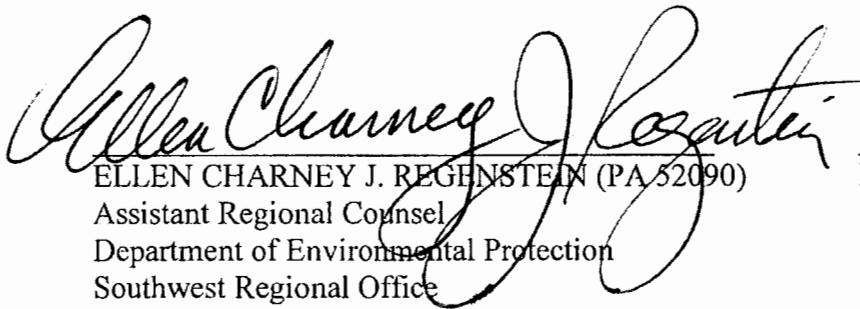
FOR INTERVENOR PLAINTIFF, COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL PROTECTION:



Christopher J. Kriley, P.E.  
Program Manager  
Clean Water Program  
Southwest Region

12-12-16

Date

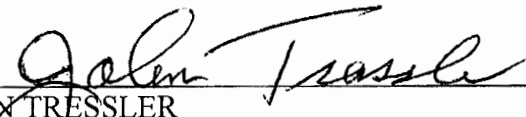


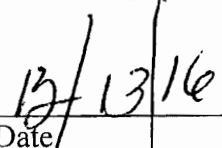
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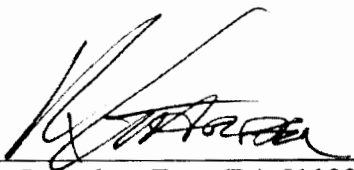
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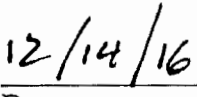
Date

FOR DEFENDANT, CONFLUENCE BOROUGH MUNICIPAL AUTHORITY:

  
\_\_\_\_\_  
JOHN TRESSLER  
Chairman

  
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