

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In The Matter Of:

Pittsburgh Water & Sewer Authority :
900 Freeport Road : Environmental Laboratory Accreditation
Pittsburgh, PA 15238 :

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 27 day of July 2012,
by and between the Commonwealth of Pennsylvania, Department of Environmental Protection
("Department") and Pittsburgh Water & Sewer Authority ("PWSA").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Act of June 29, 2002, P.L. 596, 27 Pa.C.S. §§ 4101 – 4113 ("Environmental Laboratory Accreditation Act"), the Pennsylvania Safe Drinking Water Act, the Act of May 1, 1984, P.L. 206 *as amended*, 35 P.S. § 721.1 *et seq.* ("Safe Drinking Water Act" or "SDWA"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17, and the rules and regulations promulgated pursuant to each of these Acts.

B. PWSA is an environmental laboratory as that term is defined by Section 4102 of the Environmental Laboratory Accreditation Act, 27 Pa.C.S. § 4102, and has a business address of 900 Freeport Road, Pittsburgh, PA 15238.

C. On March 10, 2006, PWSA applied for accreditation with the Department in accordance with the Environmental Laboratory Accreditation Regulations, 25 Pa. Code 252 and is assigned Laboratory Accreditation Number 02-00119 (PADWIS ID # 02119).

D. On March 17, 2006, the Department granted PWSA Chapter 252 Accreditation in accordance with 25 Pa. Code 252.4(a) ("Chapter 252").

E. As an accredited environmental laboratory, PWSA is required to adhere to the rules and regulations set forth in Chapter 252 and in Subchapter H (Laboratory Certification) of the SDWA regulations, 25 Pa. Code § 109, when performing the analyses of drinking water samples from public water systems for the purpose of ascertaining quality and demonstrating compliance with monitoring requirements set forth in 25 Pa. Code § 109.

F. On May 9-11, 2011, Department representatives conducted an in-depth data and systems review, including an on-site assessment, of PWSA.

G. During this May 2011 Departmental assessment, the Department determined that PWSA failed to meet numerous conditions of its accreditation. (See attached Report of an On-Site Assessment issued on August 2, 2011, Exhibit A.)

H. During this Departmental May 2011 assessment, the Department determined that PWSA failed to meet numerous conditions of its accreditation by failing to meet the general standards for accreditation under 25 Pa. Code 252, Subchapter C. Specifically, the Department determined that PWSA:

(1) failed to ensure that the records required by this chapter are maintained by the laboratory supervisor as required by 25 Pa. Code § 252.301 by failing to maintain traceability to the analysts performing the test, and failure to maintain records in an organized manner;

(2) failed to ensure and document the training and competency of each member of the technical staff as required by 25 Pa. Code § 252.304 by failing to: (a) document that each employee has read, understood, and is using the latest version of the laboratory's quality manual; (b) document participation in training courses in ethical and legal responsibilities; (c) document

that each employee has read and understood and acknowledged his personal ethical and legal responsibilities; (d) establish and implement procedures for permitting departures from documented policies and procedures; and (e) ensure completion of initial and continuing demonstrations of capability for all analysts;

(3) failed to maintain records of each item of equipment as required by 25 Pa. Code § 252.306(b) by failing to include: (a) the manufacturer's name, type identification, and serial number, (b) the details of maintenance performed, and (c) a history of damage, malfunction, modification, or repair;

(4) failed to ensure and document that pieces of equipment are maintained according to this subsection as required by 25 Pa. Code § 252.306(f) by failing to ensure and document that all dial and electronic thermometers are calibrated and uniquely identified and labeled with the date of calibration and correction factor;

(5) failed to maintain records for all reference materials, reagents and support services as required by 25 Pa. Code § 252.306(g) including receipt records with the lot number and expiration date;

(6) failed to assign purchased chemicals with an expiration date of 10 years when no date is provided by the manufacturer and failed to maintain standard and reagent preparation logs that contain the initials of the individual preparing the solution and the expiration date required by 25 Pa. Code § 252.306(h); and

(7) failed to ensure that the laboratory's standard operating procedures ("SOPs") accurately reflect all aspects of the testing for metals digestions and contain all of the required elements by failing to include equipment and supplies, reagents and standards, quality control, calibration and standardization, analytical procedures, calculations, and reporting of results; and

failed to determine the detection limit for metals analyzed by Standard Method ("SM") 3113B and SM 3111B as required by 25 Pa. Code § 252.307.

I. During this May 2011 Departmental assessment, the Department determined that PWSA failed to meet the conditions of its accreditation by failing to meet the quality assurance and quality control requirements for accreditation under 25 Pa. Code 252, Subchapter D.

Specifically, the Department determined that PWSA:

(1) failed to develop and maintain a quality manual that included the address of the laboratory, the contact information for the laboratory, the effective date, and a table of contents as required by 25 Pa. Code § 252.401(a);

(2) failed to document the laboratory's procedures for recordkeeping, termination of operations, detecting and permitting departures from established procedures, sample handling, and reporting analytical results in the laboratory's quality manual as required by 25 Pa. Code § 252.401(b);

(3) failed to ensure a document control system that clearly indicates the time period during which the procedure was in effect as required by 25 Pa. Code § 252.401(c);

(4) failed to provide training in ethical and legal responsibilities to all personnel within two months of employment as required by 25 Pa. Code § 252.401(d);

(5) failed to maintain records of technical personnel that include dates of employment, signatures and initials of staff, and a list of persons authorized to approve or release test reports as required by 25 Pa. Code § 252.401(e);

(6) failed to employ a recordkeeping system that uniquely identifies samples (in a repeat deviation noted by the Department in an earlier on-site assessment) as required by 25 Pa. Code § 252.401(f);

(7) failed to follow the laboratory's procedures to document corrective actions as established by the laboratory's policies and SOPs as required by 25 Pa. Code §§ 252.401(i) and (n);

(8) failed to maintain test reports that included (a) the names, functions, and signatures of the person authorizing the test report and (b) an identification of testing or analysis results not covered by the laboratory's scope of accreditation as required by 25 Pa. Code § 252.401(j);

(9) failed to follow more stringent requirements contained within a mandated method as required by 25 Pa. Code § 252.402(b) by: (a) failing to analyze matrix spikes and inorganic carbon efficiency checks for total organic carbon ("TOC"), (b) failing to analyze continuing calibration verifications with a frequency of 1 per 4 samples for sulfate, (c) failing to evaporate the samples to a constant weight and document the drying cycle for total dissolved solids, (d) failing to determine the content of the nitrite stock standard solution, (e) and failing to analyze a duplicate for fluoride;

(10) failed to meet the requirements of initial calibration and of initial ("ICV") and continuing calibration verification ("CCV") as required by 25 Pa. Code §§ 252.402(c) and (f) by: (a) failing to include the acceptance criteria for the initial calibrations in the laboratory's SOPs; (b) failing to ensure the lowest calibration standard for the regulated volatile organic compounds ("VOCs") at 0.5 µg/L; (c) failing to report results with appropriate data qualifiers when the results are above or below the established calibration range; (d) failing to analyze a final calibration verification standard for TOC; (e) and, in a repeat deviation cited during the last on-site assessment, failing to analyze CCVs in the appropriate high and low concentration range.

(11) failed to meet the requirements for method blanks of 25 Pa. Code § 252.402(g) by failing to perform corrective action when the method blank is contaminated or qualify the data results associated with contaminated method blanks;

(12) failed to meet the requirements for laboratory control samples ("LCS") as required by 25 Pa. Code § 252.402(h) by: (a) failing to analyze an LCS for TOC; (b) failed to compare the actual recovery of the LCS to the anticipated recovery; and (c) failing to use appropriate data qualifier codes for data associated with failed LCSs.

(13) failed to meet the requirements for sample duplicates and surrogate spikes by failing to use appropriate data qualifier codes with the data associated with failed quality control results; and failed to meet the minimum calculated concentration for detection limits of VOCs both as required by 25 Pa. Code §§ 252.402(i) and (j); and

(14) failed to use stock positive and negative culture controls that are traceable to a recognized National collection and failed to document that two or more analysts count typical colonies on the same plate and that the counts differ by no more than 10% as required by 25 Pa. Code § 252.404.

J. During the Department's on-site assessment, the Department determined that PWSA did not meet the conditions of its accreditation by failing to meet the proficiency test provisions for accreditation under 25 Pa. Code 252, Subchapter E. Specifically, the Department determined that PWSA failed to ensure that all proficiency test ("PT") study samples are managed, analyzed, and reported in the same manner as real environmental samples by failing to analyze the same quality control with the PTs, failed to analyze the PT samples in the same manner as samples, and failed to determine the cause of the failure of PT study samples and take necessary corrective action to correct the PT failures as required by 25 Pa. Code § 252.501.

K. During the Department's on-site assessment, the Department determined that PWSA did not meet the conditions of its accreditation by failing to meet the miscellaneous provisions for accreditation under 25 Pa. Code 252, Subchapter G. Specifically, the Department determined that PWSA failed to maintain records in an organized manner that allow reconstruction of all laboratory activities associated with the testing or analysis of environmental samples and failed to make changes to records that include the identification of the individual making the change and the date of the change as required by 25 Pa. Code § 252.706.

L. On August 1, 2011, the Department issued a Report of an On-Site Assessment ("assessment report") outlining the violations observed during the May 2011 on-site assessment.

M. On October 6, 2011, the Department received PWSA's Corrective Action Report ("October CAR") in response to the Department's assessment report. (See attached October CAR, Exhibit B.)

N. On November 17, 2011, the Department responded ("November Response") to PWSA's October CAR. (See attached Department's November Response, Exhibit C) In the Department's November Response to PWSA's October CAR, the Department outlined PWSA's continued violations as observed during review of PWSA's October CAR and provided the required corrective action and additional documentation to be submitted in order to demonstrate correction of the violations.

O. On December 21, 2011, the Department received PWSA's second CAR ("December CAR") in response to the Department's November Response. (See attached December CAR, Exhibit D.)

P. On February 17, 2012, the Department issued a notice of suspension ("February Suspension") for failure to establish satisfactory method detection limit ("MDL") studies that

meet the requirements of 40 CFR, Part 136 Appendix B for thallium, and regulated volatile organic compounds (“VOCs”) and failure to meet the analytical calibration requirements of 40 CFR, Part 141.131.(b)(2)(iv) for total haloacetic acids. (See attached February Suspension notice, Exhibit E.)

Q. On March 12, 2012, the Department responded (“March Response”) to PWSA’s December CAR. (See attached Department’s March Response, Exhibit F) In the Department’s March Response to PWSA’s December CAR, the Department outlined PWSA’s continued violations as observed during review of PWSA’s December CAR and provided the required corrective action and additional documentation to be submitted in order to demonstrate correction of the violations.

R. Pursuant to the Environmental Laboratory Accreditation Act, 27 Pa. C.S. § 4104, the Department has the power and duty to enforce the Chapter 252 environmental laboratory accreditation program requirements.

S. The violations described in Paragraphs H through K subject PWSA to enforcement actions pursuant to Section 4110(b) of the Environmental Laboratory Accreditation Act and pursuant to 25 Pa. Code §§ 252.702(b)(7) and 252.702(b)(12).

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by PWSA as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department, authorized and issued pursuant to Section 4104 of the Environmental Laboratory Accreditation

Act, 27 Pa. C.S. § 4104 and pursuant to the Pennsylvania Safe Drinking Water Act, 35 P.S. § 721.13.

2. Findings.

a. PWSA agrees that the findings in Paragraphs A through Q are true and correct. In any matter or proceeding involving PWSA and the Department, PWSA shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. Corrective Action:

a. Within 30 days of this Consent Order and Agreement ("COA") PWSA shall submit to the Department for its approval, a corrective action report ("CAR") demonstrating correction of the violations outlined in the Department's March Response to PWSA's December CAR. PWSA shall correct all violations identified in the Department's assessment report and the Department's Responses to PWSA's CARs, implement procedures to ensure that these violations do not recur, and supply to the Department documentation of all such corrective actions undertaken by PWSA as outlined in the Department's March Response to PWSA's CAR. PWSA must also ensure maintenance of such corrective actions.

b. Within four (4) months after PWSA has complied with the requirements of Paragraph 3.a of this COA, PWSA shall conduct a complete assessment of its conditions of accreditation as such conditions are set forth in its accreditation and by the Environmental Laboratory Accreditation Act, 27 Pa. C.S. § 4104, with the assistance of a qualified independent third party, who shall be either an ISO 17025 qualified assessor or a NELAP qualified assessor. PWSA shall complete and provide a copy of this assessment (the "Third Party Assessment") to

the Department within two (2) months of receipt of the assessment report from the third party assessor. PWSA shall implement the Third Party Assessment's corrective measures to ensure current and future compliance with its conditions of accreditation. The Third Party assessment will include a review of PWSA's analytical procedures, training, recordkeeping, and reporting over the twelve (12) month period prior to the signing of this COA, including a list of any deficiencies found in this review. Together with the Department, the third party independent reviewer will determine whether any PWSA's clients are to be notified of the deficiencies found in this review.

4. Civil Penalty Assessment.

a. Within 30 days of the date of this Consent Order and Agreement, PWSA shall pay a civil penalty of \$10,000.00. This payment is in settlement of the Department's claim for civil penalties for the Environmental Laboratory Accreditation Act violations occurring in Paragraphs H through K. The payment shall be made by corporate check or the like made payable to the Commonwealth of Pennsylvania and sent to: Aaren Alger, Chief, Laboratory Accreditation Program, Bureau of Laboratories, Department of Environmental Protection, 2575 Interstate Drive, P.O. Box 1467 Harrisburg, PA 17105.

5. Remedies.

a. In the event that PWSA fails to comply with any term or provision of this Consent Order and Agreement by failing to ensure that all violations are corrected and correction is maintained, or fails to comply with the terms or provisions of paragraph 4 of this Consent Order and Agreement, the Department may revoke PWSA's environmental laboratory accreditation in the Department's Laboratory Accreditation Program for a period of at least six months. PWSA

may choose to re-apply for accreditation at the end of the six month period and shall be subject to the fees associated with an initial application for accreditation and an on-site assessment.

b. In the event PWSA fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy.

6. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. PWSA reserves the right to challenge any action which the Department may take to require those measures.

7. Liability of Operator. PWSA shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Except as provided in paragraph 8(c), PWSA also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

8. Transfer of Site.

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, or terminated or otherwise altered by the transfer of any legal or equitable interest in PWSA or any part thereof.

b. If PWSA intends to transfer any legal or equitable interest in PWSA which is affected by this Consent Order and Agreement, PWSA shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty

(30) days prior to the contemplated transfer and shall simultaneously inform the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate PWSA's duties and obligations under this Consent Order and Agreement upon transfer of PWSA. PWSA waives any right that it may have to challenge the Department's decision in this regard.

9. Correspondence with Department. All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

US Postal Service:

Aaren S. Alger
Laboratory Accreditation Program
Department of Environmental Protection
Bureau of Laboratories
PO Box 1467
Harrisburg, PA 17105-1467

All other modes of delivery:

Aaren S. Alger
Laboratory Accreditation Program
Department of Environmental Protection
Bureau of Laboratories
2575 Interstate Drive
Harrisburg, PA 17110-9332

10. Correspondence with PWSA. All correspondence with PWSA concerning this Consent Order and Agreement shall be addressed to:

Dr. Stanley States
Pittsburgh Water & Sewer Authority
900 Freeport Road
Pittsburgh, PA 15238

PWSA shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by certified mail to the above address.

11. Severability. The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

12. Entire Agreement. This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

13. Attorney Fees. The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

14. Modifications. No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

15. Termination. The obligations of this COA shall terminate when the Department determines that PWSA has complied with the requirements of Chapter 252 as determined by the Department during two consecutive on-site assessments.

16. Titles. A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

17. Decisions Under Consent Order. Any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which PWSA may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

18. Dispute Resolution.

a. PWSA may initiate dispute resolution under this paragraph, in response to any decision required of the Department under this COA.

b. To initiate dispute resolution, PWSA shall provide written notice to the Department within ten (10) days of the decision in dispute. PWSA shall have an additional ten days to provide the Department with a written list of objections to the decision in dispute, the relevant facts, analysis and opinions and other supporting data ("Statement of Position"). The Department shall have twenty (20) days to provide its Statement of Position.

c. Within the twenty (20) day period following receipt of the Department's Statement of Position, the Section Chief of the Bureau of Laboratory Accreditation and the PWSA shall confer in an attempt to resolve the dispute. In the event the parties are unable to resolve the dispute within this period, the Statements of Position shall be provided to the Department's Director the Bureau of Laboratories to issue a final decision resolving the dispute.

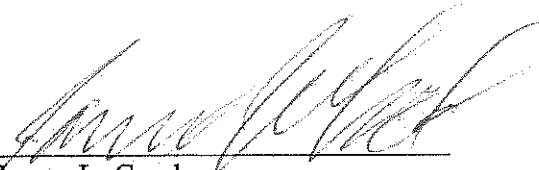
d. During the pendency of the dispute resolution procedures set forth in Subparagraphs (b) and (c), any obligation to be performed under this Consent Order and Agreement which is the subject of such dispute and any associated activities whose performance is directly dependent upon the resolution of the dispute shall be postponed for a period of time not to exceed the actual time taken to resolve the dispute pursuant to Subparagraphs (b) and (c) or as otherwise agreed by the parties. All other obligations and activities shall be completed in accordance with the terms of this Consent Order and Agreement.

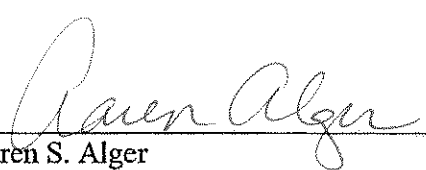
e. Any time period for dispute resolution set forth herein may be extended by written agreement of the parties.


IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of PWSA certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of PWSA; that PWSA consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that PWSA hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by PWSA's attorney certifies only that the agreement has been signed after consulting with counsel.


FOR PWSA:

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:


James L. Good
Interim Executive Director
Pittsburgh Water & Sewer Authority


Aaren S. Alger
Chief, Laboratory Accreditation Program


David G. Ries, Esq.
Attorney for Pittsburgh Water &
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Ann Johnston
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