

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Pittsburgh Water and Sewer Authority	:	
900 Freeport Road	:	Environmental Laboratory Accreditation
Pittsburgh, PA 15238-8295	:	
	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement (“COA”) is entered into this 4 day of May 2015, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and Pittsburgh Water and 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 operates an environmental laboratory, as the term “environmental laboratory” 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 15238-8295.
- C. On March 10, 2006, PWSA applied for accreditation with the Department in accordance with the Environmental Laboratory Accreditation Regulations, 25 Pa. Code Chapter

252, and the Act, 27 Pa. C.S. § 4104. PWSA is assigned Laboratory Accreditation Number 02-00119 (PADWIS ID # 02119).

D. On March 17, 2006, the Department granted accreditation to PWSA 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 (“Chapter 109”), when performing the analyses of drinking water samples from public water systems for the purpose of ascertaining water quality and demonstrating compliance with monitoring requirements set forth in Chapter 109.

F. On March 25-27, 2014, Department employees conducted an in-depth data and systems review, including an on-site assessment (“March 2014 Assessment”) of PWSA to determine compliance with Chapter 252 and Chapter 109.

G. During the Department’s March 2014 Assessment, the Department determined that PWSA failed to meet conditions of its accreditation by failing to comply with the requirements of Chapter 252 and Chapter 109.

H. On March 27, 2014, during the last day of its on-site assessment, the Department reviewed its findings from the on-site with PWSA.

I. On June 4, 2014, the Department notified PWSA of the violations found during this on-site assessment in a Report of an Assessment (“March 2014 OSR”) (See attached and incorporated by reference, March 2014 OSR, issued by DEP on June 4, 2014, Exhibit A.).

J. Pursuant to the Environmental Laboratory Accreditation Act, 27 Pa. C.S. § 4103(b), an environmental laboratory must be accredited and be in compliance with the provisions of Chapter 252 in order to generate data or perform analyses.

K. During the March 2014 Assessment, the Department found 58 deviations, of which seven were repeat deviations previously found by the Department during an on-site assessment conducted in May 2011 of PWSA. The repeat deviations are described in Deviations G17, G22, G42, G101, G166, C6, and C29 of the March 2014 OSR. The Department also found that Deviation G22 was a repeat deviation previously also cited in the July 2008.

L. During the May 2011 Department on-site assessment, the Department found numerous violations which the Department and PWSA resolved in a July 2012 COA.

L. During the March 2014 Assessment, the Department determined that PWSA violated the general, the method-specific, the quality control and the technical requirements by failing to ensure compliance with Chapter 252, Chapter 109, the essential standards outlined in the applicable mandated methods, and/or regulations, whichever are more stringent, as required by 25 Pa. Code §§ 252.402(b) and 252.404(b).

M. Specifically, PWSA: (1) failed to meet the method-specific requirements as described in Deviations RM1 – RM8 of the March 2014 OSR and (2) failed to meet the regulatory requirements of 40 CFR, Part 141 as described in Deviations RM9 and RM10 of the March 2014 OSR.

N. In addition, during the March 2014 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, as described in Deviations G17, G20, G22, G25, G27, G42, G88, G101, G111, G126, G127, G130, G133, G134, G136, and G166 of the March 2014 OSR.

O. During the March 2014 assessment, the Department determined that PWSA failed to meet numerous 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 failed to meet the requirements of § 252.402 (Essential quality control requirements – chemistry) as described in Deviations C5, C6, C22 - C24, C29, C40, and C63 - C66 of the March 2014 OSR.

P. During the March 2014 assessment, the Department determined that PWSA failed to meet numerous conditions of its accreditation by failing to meet the quality assurance and quality control requirements for accreditation under 25 Pa. Code 252, Subchapter D, by failing to meet the requirements of § 252.404 (Essential quality control requirements – microbiology) as described in Deviations M2 - M7, M23, M42, M45, M49, M50, M59, M61, M62, M64, M66, M68, M72, and M74 of the March 2014 OSR.

Q. During the March 2014 assessment, the Department determined that PWSA failed to meet numerous conditions of its accreditation by failing to meet the proficiency test (“PT”) study requirements for accreditation under 25 Pa. Code 252, Subchapter E. Specifically, the Department determined that PWSA failed to meet the requirements of § 252.501 as described in Deviations PT4 and PT11 of the March 2014 OSR.

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. Due to the above-described violations of the Chapter 252 environmental laboratory accreditation program, PWSA voluntarily relinquished its accreditations for PWSA’s microbiology fields on April 15, 2014. (See Exhibit B.)

T. In addition, due to the risks to public health as a result of the violations, the Department required all PWSA public water supplier clients to re-analyze samples analyzed during the month of April 2014. (See Exhibit C.)

S. Pursuant to the Department's "Policy for the Consideration of Community Environmental Projects in Conjunction with Assessment of Civil Penalty," (Document No. 012-4180-001) PWSA submitted a written proposal to provide funding for rehabilitation and enhancement of the Nine Mile Run Stream, in Frick Park, a City of Pittsburgh Park in Allegheny County, Pennsylvania (the "Project"). The Project is proposed to be performed by the Nine Mile Run Watershed Association ("NMRWA"), with assistance by PWSA. Total estimated cost of the project is Fifty Thousand Dollars (\$50,000.00). PWSA has agreed to pay Fifty Thousand Dollars (\$50,000.00) to fund the Project. The proposal for the Project is attached as Exhibit D and a detailed budget is attached thereto. The third-party identified in the proposal has a bona fide interest in participating in the Project.

T. The Department has determined that the Project will provide a substantial environmental benefit and that the Project is not something that PWSA is otherwise legally required to do. The Department has agreed that the value of the Project is not less than Fifty Thousand Dollars (\$50,000.00) and that, in consideration of the Project, it will accept PWSA's funding of this Project in lieu of a civil penalty payment in the amount of Fifty Thousand Dollars (\$50,000.00) to satisfy the violations described herein.

S. The violations described in Paragraphs L through Q subject PWSA to enforcement actions under Section 4110(b) of the Environmental Laboratory Accreditation Act and §§ 252.702(b)(2), (3), and (12) of Chapter 252.

ORDER

After full and complete negotiation of all matters set forth in this COA 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 COA is an Order of the Department, authorized and issued pursuant to Section 4104 of the Environmental Laboratory Accreditation Act, 27 Pa. C.S. § 4104.

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 COA in any matter or proceeding.

3. Corrective Action.

a. Before requesting the Department to reinstate accreditation for PWSA's microbiology fields of accreditation, PWSA shall correct all deviations outlined in the March 2014 OSR and submit to the Department for its approval a corrective action report demonstrating correction of all deviations.

b. PWSA may choose to apply to the Department to reinstate PWSA's microbiology fields of accreditation or apply for accreditation for new microbiology fields of accreditation after the Department accepts PWSA's corrective actions. PWSA shall submit an Addition of Fields of Accreditation (Part 4) application in addition to paying the Supplemental On-site Assessment and Addition of Fields of Accreditation Fees. The Department will then conduct an on-site assessment as a part of approval process for any such PWSA application.

c. ***Community Environmental Project.***

(i) Implementation Agreement. The Community Environmental Project ("CEP") provides for the design and construction of the Project, which includes rehabilitation and enhancement of the Nine Mile Run Stream as it runs through Frick Park located in the City of Pittsburgh, Allegheny County, Pennsylvania. In performing the CEP, within sixty (60) days of this Consent Order and Agreement, PWSA shall enter into an agreement with NMRWA to complete the Project, as described in the proposed CEP (Exhibit D - written project proposal).

i. The Implementation Agreement, shall, at a minimum, include the following:

- A. Development of an overall site plan, depicting existing and proposed condition, including current photographs of the site;
- B. Development of a plan to educate students and local residents concerning the Project and the benefits of stream rehabilitation and enhancement ;
- C. A commitment by NMRWA to implement the project in substantial conformity with Exhibit D to this COA and in substantial conformity with the description and conceptual design plan therein and in accordance with the costs as indicated in the detailed budget included as an attachment to Exhibit D;
- D. An identification of a point of contact for the project;

- E. Submission to PWSA and the Department of quarterly reports of the progress towards the deliverables identified in the CEP; and
- F. The submission of a Final Project Report to the Department and to PWSA upon completion of the Project, to include a project narrative, as built drawings and current photos of the Project area, a financial summary of the Project, and a plan for educational programs about the Project.

(ii) PWSA shall supply a final signed copy of the Implementation Agreement within five (5) days of its full execution to the Department and it shall become Exhibit E of this Consent Order and Agreement.

(iii) CEP Funding. PWSA shall submit, to the Department, proof of funding of the following within five days of each occurrence:

- i. Within 10 days of signing the Implementation Agreement, PWSA shall make a payment in the amount of Ten Thousand Five Hundred Dollars (\$10,500.00) to NMRWA for costs associated with the Field Assessment and Design and Environmental Permitting phases of the Project.
- ii. Within 10 days of certification in writing by NMRWA to PWSA and the Department that all environmental authorizations and permits required for the Project have been obtained by NMRWA, PWSA shall make a payment in the amount of Thirty-Nine Thousand Five Hundred Dollars (\$39,500.00) to NMRWA for costs associated with the remaining phases of the project.

(iv) Completion of Project. PWSA shall ensure there is adequate funding for completion of the Project as described in Paragraph c above, and Exhibits D and E, attached hereto, up to the total estimated project cost of \$50,000.00, if necessary, to complete the Project. Within twenty (20) days of the completion of the Project, PWSA shall submit to the Department an affidavit of the PWSA corporate official responsible for overseeing the Project.

The affidavit shall contain a certification that the Project is complete and a detailed statement setting forth all costs incurred in completing the Project.

(v) ***Project Costs.*** PWSA shall not deduct any costs incurred in connection with or in any way associated with the Project described herein for any tax purpose or otherwise obtain favorable tax treatment for those costs. If requested to do so by the Department, PWSA shall submit an affidavit of the corporate officer responsible for the financial affairs of PWSA certifying that PWSA has not deducted or otherwise obtained favorable tax treatment of any of the costs of the Project.

(vi) ***Publicity About the Project.*** PWSA agrees that whenever it publicizes, in any way, the Project, it will state that the Project was undertaken as part of the settlement of an enforcement action with the Department.

4. Stipulated Civil Penalties.

a. In the event that PWSA fails to correct or maintain correction of the deviations found by the Department during its May 2011, March 2014, and subsequent on-site assessments and the Department finds repeat deviations during any of the next three on-site assessments that it conducts of PWSA, PWSA shall pay: \$1,000.00 per repeat deviation and \$1,000.00 for each day for failing to complete the obligations set forth in paragraph 3. c.

b. Stipulated civil penalty payments shall be payable on or before the fifteenth day of the month following notice by the Department of the repeat deviation. All payments 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.

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

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

5. Remedies.

a. In the event that PWSA fails to comply with any term or provision of this COA 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 COA, the Department will; (1) revoke PWSA's environmental laboratory accreditation in the Department's Laboratory Accreditation Program for a period of at least six months and (2) disqualify the laboratory supervisors of PWSA. PWSA may choose to re-apply for accreditation at the end of the 6 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 COA, 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 COA. 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 COA, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Except as provided in paragraph 9(c), PWSA also shall be liable for any violation of this COA caused by, contributed to, or allowed by its successors and assigns.

8. Transfer of Site.

a. The duties and obligations under this COA 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 COA, PWSA shall serve a copy of this COA 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 may agree to modify or terminate PWSA's duties and obligations under this COA 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 COA 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 COA shall be:

Addressed to:

James L. Good
Interim Executive Director
Pittsburgh Water and Sewer Authority
1200 Penn Avenue
Pittsburgh, PA 15222

With copies addressed to:

Mark F. Nowak
Solicitor
Clark Hill, PLC
One Oxford Center
301 Grant Street, 14th Floor
Pittsburgh, PA 15219

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 COA, including its enforcement, may be made by mailing a copy by certified mail to the above address.

11. Severability. The paragraphs of this COA 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 COA 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 COA.


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


15. Titles. A title used at the beginning of any paragraph of this COA may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

16. Decisions Under Consent Order. Any decision which the Department makes under the provisions of this COA 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 COA.

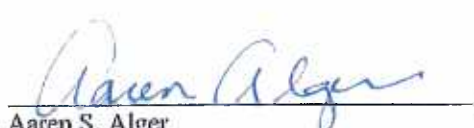
IN WITNESS WHEREOF, the Parties hereto have caused this COA to be executed by their duly authorized representatives. The undersigned representatives of PWSA certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this COA on behalf of PWSA; that PWSA consents to the entry of this COA as a final ORDER of the Department; and that PWSA hereby knowingly waives its right to appeal this COA 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 Chapter 5, Subchapter A and Chapter 7, Subchapter A; or any other provisions of law. Signature by PWSA's attorney certifies only that this COA has been signed after consulting with counsel.

FOR PITTSBURGH WATER
AND SEWER AUTHORITY:


James L. Good
Interim Director,
Pittsburgh Water and Sewer Authority


David Ries, Esq.
Clark Hill, PLC
Attorney for
Pittsburgh Water and Sewer Authority

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:


Aaren S. Alger
Chief, Laboratory Accreditation Program


Ann Johnston
Assistant Counsel

Exhibits

- A – March 2014 OSR
- B – April 15, 2014 relinquishment letter
- C – Letter to PWSA clients
- D – CEP Project Description with detailed budget attachment
- E – PWSA – NMRWA Implementation Agreement – to be included as exhibit hereto