

Complaint
EXHIBIT 2

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

Bucks County Water and Sewer Authority : Water Management Program; Sewage
1275 Almshouse Road : Sanitary Sewer Overflows, PS-1A
Warrington, PA 18976 : Plumstead Township
: Bucks County

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 17th day of June 2008, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "Department"), and the Bucks County Water and Sewer Authority (hereinafter "BCWSA").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. § 691.1 et seq. ("Clean Streams Law"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 ("Administrative Code") and the rules and regulations promulgated thereunder.

B. BCWSA exists under the laws of the Commonwealth of Pennsylvania with their offices located in Warrington, Pennsylvania. The mailing address is 1275 Almshouse Road, Warrington, PA 18976. BCWSA is considered a "municipality" as that term is defined in Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

C. BCWSA owns and operates a sanitary sewer pump station (PS-1A), located along Route 611 in Plumstead Township, Bucks County, Pennsylvania. BCWSA also owns and operates the sanitary sewer collection system tributary to PS-1A, which serves portions of Plumstead Township.

D. BCWSA's sanitary sewer collection system and the PS-1A pump station convey sewage, within the meaning of that term as defined in Section 1 of the Clean Streams Law, supra, 35 P.S. § 691.1, from residences and businesses within Plumstead Township, to the Chalfont-New Britain Joint Sewage Authority sewage treatment plant located in Doylestown Township, Bucks County.

E. The BCWSA service area in Plumstead Township does not have a stormwater system. The BCWSA sanitary sewer system, in part, serves as a drain for stormwater in Plumstead Township, allegedly resulting in excessive inflow into the sanitary sewer system.

F. The area where PS-1A overflows into the North Branch of Neshaminy Creek is also a tributary to Lake Galena, a water of the Commonwealth, and a source of drinking water for thousands of residents of Bucks County.

G. The existence of excessive I/I within BCWSA's sanitary sewer collection system has resulted in BCWSA undertaking an I/I abatement program in order to prevent SSOs from occurring. Notwithstanding the I/I abatement program undertaken by BCWSA, as noted previously, BCWSA alleges that much of the I/I can be attributed to damaged laterals located on private property and beyond the control of BCWSA.

H. On February 27, 2007, BCWSA provided the Department with a preliminary Corrective Action Plan ("CAP") in order to address the SSO problems being encountered in the sanitary sewer collection system and at PS-1A.

I. The Department approved the CAP on September 19, 2007. A copy of the approval letter is included in Attachment A of this Consent Order and Agreement. Supplemental information for the CAP was provided to the Department on June 22, 2007.

J. Since May 13, 2002, PS-1A and/or the sanitary sewer collection system tributary to PS-1A, have overflowed on at least 33 separate occasions. These are summarized in Attachment B of this Consent Order and Agreement.

K. Sections 201, 202, and 401 of the Clean Streams Law, 35 P.S. §§ 691.201, 691.202, and 691.401, prohibit the discharge of sewage, or other polluting substances into waters of the Commonwealth, except as provided under the Clean Streams Law and the Rules and Regulations of the Department.

L. The overflows described in paragraph J above constitute violations of Sections 201, 202, and 401 of the Clean Streams Law, 35 P.S. §§ 691.201, 691.202, and 691.401.

M. The violations described in paragraph L hereof, constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611; a statutory nuisance under Section 601 of the Clean Streams Law, 35 P.S. § 691.601; and subject BCWSA to civil penalty liability under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

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 BCWSA as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Clean Streams Law, 35 P.S. § 691.5; and Section 1917-A of the Administrative Code, supra.

2. **Findings.**

a. BCWSA agrees that the findings in paragraphs A through M are true and correct and, in any matter or proceeding involving BCWSA and the Department, BCWSA 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.** BCWSA agrees to eliminate SSOs in the Plumstead Township sanitary sewer collection system and at PS-1A by implementing an I/I abatement program consistent with the items stated in BCWSA's approved CAP.

The work described above shall be accomplished in accordance with the following schedule:

A.	<u>Milestone Event(s)</u>	<u>Milestone Date</u>
1.	Televising of all lateral connections within the PS-1A drainage area.	June 30, 2008
2.	Complete lateral repairs based upon the results of the televising described in No. 1 above.	November 30, 2008
3.	Complete lateral repairs based upon the results of the prior smoke testing.	November 30, 2008
4.	Perform post-lateral repair flow metering.	June 30, 2009
5.	Analyze metering data.	October 31, 2009
6.	Report the results of the metering to the Department.	December 31, 2009
7.	The Second Quarter Status Report for 2008. Should this report establish the need for further measures to be taken to abate sanitary sewer overflows, BCWSA shall implement the following:	June 30, 2008
a.	Submittal of a Water Quality Management Part II permit ("WQM Permit") application for the construction of a dual force main system for PS-1A.	December 31, 2008

- | | | |
|----|---|---|
| b. | Start construction of the dual force main system, as approved by the WQM Permit. | Within three months of receipt of the WQM Permit. |
| c. | Complete construction of the dual force main system, as approved by the WQM Permit. | Within 12 months of receipt of the WQM Permit. |

OR

- | | | |
|----|---|--|
| a. | Submittal of a WQM Permit application for the construction of a surge tank at PS-1A to retain flows in excess of the pump station capacity. | Date to be determined pending Plumstead Township Land Development but no later than June 30, 2009. |
| b. | Start construction of the surge tank, as approved by the WQM Permit. | Within three months of receipt of the WQM Permit. |
| c. | Complete construction of the surge tank as approved by the WQM Permit. | Within 12 months of receipt of the WQM Permit. |

B. System-Wide I/I Abatement Program

BCWSA shall continue to implement I/I abatement practices throughout the entire PS-1A drainage area in order to eliminate I/I from entering the sanitary sewer collection system. These practices may include, but not be limited to, the following:

1. Pressure testing of all sewer main joints.
2. Grouting of all failed joints and manholes.
3. Slip-line pipe remediation.
4. Elevation of manhole lids above flood stage with bolt down, water-tight lids.
5. Inspection and remediation of lateral sewer vents with missing or improper covers or vents.

6. Implementation of a public education program to identify and eliminate sump pump, roof, and foundation drain connections to the sanitary sewer.

C. Progress Reports

BCWSA shall submit quarterly progress reports to the Department by the fifteenth day following the end of each calendar quarter. Each report shall provide a status of all milestones listed in this Consent Order and Agreement, in addition to providing a descriptive update of all I/I abatement activities implemented throughout Plumstead Township. The reports shall be submitted through and including December 31, 2011.

4. **Civil Penalty Settlement.** Within 30 days of the date of this Consent Order and Agreement, BCWSA shall pay a civil penalty of **SEVENTY-THREE THOUSAND DOLLARS (\$73,000)**. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in paragraph L, above, covering the period from May of 2002 to February of 2008. The payment shall be made by corporate check or the like made payable to the Clean Water Fund and sent to Mr. Jesse Goldberg, Environmental Protection Compliance Specialist, Pennsylvania Department of Environmental Protection, 2 East Main Street, Norristown, PA 19401.

5. **Stipulated Penalties.**

a. In the event BCWSA fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, BCWSA shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty for each violation as specified below:

1. Between the execution date of this Consent Order and Agreement and December 31, 2011, subject to the conditions of paragraph 12 herein, BCWSA shall make a payment to the Clean Water Fund in the amount of **ONE HUNDRED DOLLARS (\$100)** per day for each day of noncompliance with the milestone schedule dates specified in paragraph 3 of this Consent Order and Agreement.

2. Between the execution date of this Consent Order and Agreement and the date ending no later than 18 months after the receipt of the WQM Permit, subject to the conditions of paragraph 12 herein, BCWSA shall pay into the Clean Water Fund **TWO THOUSAND DOLLARS (\$2,000)** for each sanitary sewer overflow that occurs at the manhole located directly adjacent to PS-1A, along the North Branch of Neshaminy Creek. For SSOs at other locations within the sanitary sewer collection system tributary to PS-1A, a stipulated penalty payment of **ONE THOUSAND DOLLARS (\$1,000)** shall be payable into the Clean Water Fund.

a. The Department reserves the right to assess additional civil penalties and/or to bring any action at law or equity for pollution incidents at or from PS-1A and the sanitary sewer collection system which result from willful actions of BCWSA or its agents and/or for pollution incidents which have an adverse impact on the receiving stream or which adversely affect public health, safety, and welfare.

b. Stipulated penalty payments for schedule violations shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded as described in paragraph 4 (Civil Penalty Settlement), above. Stipulated civil penalties shall be due automatically and without notice.

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

6. Additional Remedies.

a. In the event BCWSA 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.

b. The remedies provided by this paragraph and paragraph 5 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

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

8. **Liability of Operator.** BCWSA 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 9(c), BCWSA also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

9. **Transfer of Site.**

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

b. If BCWSA intends to transfer any legal or equitable interest in the Plumstead Township sanitary sewer collection system or PS-1A, which is affected by this Consent Order and Agreement, BCWSA 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 Regional Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate BCWSA's duties and obligations under this Consent Order and Agreement upon transfer of the Plumstead Township sanitary sewer collection system or PS-1A. BCWSA waives any right that it may have to challenge the Department's decision in this regard.

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

Regional Water Quality Manager
Department of Environmental Protection
2 East Main Street
Norristown, PA 19401
484-250-5970 Fax: 484-250-5971

11. **Correspondence with BCWSA.** All correspondence with BCWSA concerning this Consent Order and Agreement shall be addressed to:

Mr. Benjamin Jones
Executive Director
Bucks County Water and Sewer Authority
1275 Almshouse Road
Warrington, PA 18976
215-343-2538 Fax: 215-200-0324

BCWSA 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 first class mail to the above address.

12. **Force Majeure.**

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

b. BCWSA shall only be entitled to the benefits of this paragraph if it notifies the Department within five 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 BCWSA to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within 10 days of its submission. BCWSA'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 BCWSA and other information available to the Department. In any subsequent litigation, BCWSA 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.

13. **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.

14. **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 intent of any provisions herein in any litigation or any other proceeding.

15. **Attorney Fees.** The parties agree to 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.

16. **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.

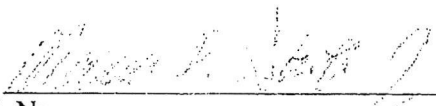
17. **Titles.** A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

18. **Decisions Under Consent Order.** Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, 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 BCWSA may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.


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 BCWSA 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 BCWSA; that BCWSA consents to the entry of this Consent Order and Agreement as a final **ORDER** of the Department; and that BCWSA 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, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S. § 103(a); and Chapters 5A and 7A, or any other provision of law. Signature by BCWSA's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR BUCKS COUNTY WATER AND SEWER AUTHORITY:

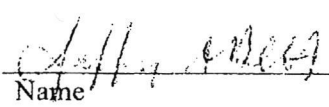
FOR THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION



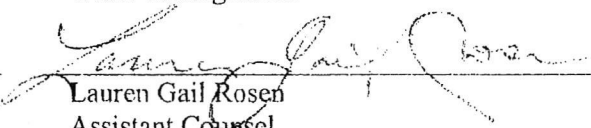
Name
President or Vice President



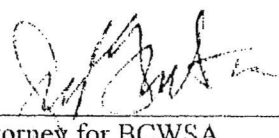
Jenifer Fields, P.E.
Regional Manager
Water Management



Name
Secretary or Treasurer



Lauren Gail Rosen
Assistant Counsel



Attorney for BCWSA

Re 30 (joh07)143-3

Attachment A Copy of the Corrective Action Plan Approval Letter

2 East Main Street
Norristown, PA 19401
September 19, 2007

Southeast Regional Office

Phone: 484-250-5970
Fax: 484-250-5971

Mr. Benjamin Jones
Executive Director
Bucks County Water and Sewer Authority
1275 Almshouse Road
Warrington, PA 18976

Re: Chapter 94 Municipal Wasteload Management
Sanitary Sewer Connection Prohibition
Corrective Action Plan/Connection Management
Plan
Sanitary Sewer Overflows-PS 1A
Plumstead Township
Bucks County

Dear Mr. Jones,

We have received and reviewed your April 7, 2007, and Carroll Engineering Corporation's June 22, 2007, submission of the Corrective Action Plan to address the sanitary sewer overflows in the Plumstead Township sanitary sewer collection system. By means of this letter, your Corrective Action Plan is approved. Please submit calendar quarterly reports detailing work completed in the previous quarter and work to be performed in the following quarter. Your quarterly reports will provide you with the means to request Chapter 94 connection credits associated with work completed. Generally, we issue connection credits at a rate of 10:1, for every 10 gallons of 10 abatement, 1 gallon of connection credit is approved.

Should you have any questions regarding this letter or the Chapter 94 program, please call Mr. Jim McTish of my staff at 484-250-5180.

Sincerely,

Jennifer Heids, P.E.
Regional Manager
Water Management

Enclosure

cc: Mr. Evenson - Carroll Engineering Corporation
Bucks County Health Department
Re: 30 CAR07WOM1262-7

Attachment B PS-1A Pump Station and Collection System Overflows

Date	Location
May 13, 2002	Old Easton Road
September 27, 2002	Old Easton Road
November 17, 2002	PS-1A
December 12, 2002	PS-1A and Dave's Sporting Goods
February 23, 2002	PS-1A and Dave's Sporting Goods
May 26, 2003	Old Easton Road
June 4, 2003	PS-1A
June 21, 2003	PS-1A and Dave's Sporting Goods
August 6, 2003	PS-1A and Old Easton Road
September 28, 2004	PS-1A
January 14, 2005	PS-1A, Dave's Sporting Goods, Old Easton Road
March 29, 2005	Old Easton Road
April 5, 2005	PS-1A, Dave's Sporting Goods, Old Easton Road
October 8, 2005	PS-1A
October 25, 2005	PS-1A
January 3, 2006	PS-1A, Dave's Sporting Goods
January 18, 2006	PS-1A, Dave's Sporting Goods
June 28, 2006	PS-1A, Dave's Sporting Goods
July 22, 2006	PS-1A
September 3, 2006	Old Easton Road
October 17, 2006	PS-1A
October 20, 2006	PS-1A
November 8, 2006	PS-1A, Dave's Sporting Goods
January 1, 2007	PS-1A
January 8, 2007	PS-1A
March 2, 2007	PS-1A, Dave's Sporting Goods
March 20, 2007	Old Easton Road, Dave's Sporting Goods
April 14, 2007	PS-1A, Old Easton Road
April 27, 2007	PS-1A
April 28, 2007	PS-1A
April 29, 2007	PS-1A
December 16, 2007	PS-1A
February 13, 2008	PS-1A