

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public	:	M-2018-2640802
Utility Code Regarding Pittsburgh Water and	:	M-2018-2640803
Sewer Authority – Stage 1	:	
	:	
Petition of The Pittsburgh Water and Sewer	:	P-2018-3005037
Authority for Approval of Its Long-Term	:	P-2018-3005039
Infrastructure Improvement Plan	:	

**FIFTH INTERIM ORDER
ADMITTING PWSA HEARING EXH. NO. 6
AND CLOSING THE HEARING RECORD**

HISTORY OF THE PROCEEDING

On September 28, 2018, the Pittsburgh Water and Sewer Authority (PWSA) filed (a) its Compliance Plan (Compliance Plan or CP) at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater) and (b) its Long Term Infrastructure Improvement Plan (LTIIP), which was docketed at Docket Nos. P-2018-3005037 (water) and P-2018-3005039 (wastewater). These proceedings were subsequently consolidated, upon motion by PWSA, by Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson (collectively, the undersigned ALJs).¹

On October 18, 2018, the Office of Consumer Advocate (OCA) filed an Answer, Notice of Intervention, and Public Statement. The OCA further submitted comments regarding the LTIIP on October 25, 2018, and comments identifying preliminary issues in PWSA's Compliance Plan on November 2, 2018. On October 18, 2018, the Office of Small Business

¹ First Interim Order Granting Motion for Consolidation of Proceedings (dated February 21, 2019). On February 5, 2019, the undersigned ALJs were assigned the LTIIP proceeding. *Id.*

Advocate (OSBA) filed an Answer and Notice of Intervention.² On October 22, 2018, the Commission's Bureau of Investigation and Enforcement (I&E) entered its appearance.³ I&E further submitted comments regarding the LTIIP on October 25, 2018.

Petitions to Intervene were filed by Pennsylvania-American Water Company (PAWC) and Pittsburgh UNITED on October 30, 2018 and November 1, 2018, respectively. Pittsburgh UNITED further submitted comments regarding the LTIIP on October 25, 2018, and comments in response to the Compliance Plan on November 1, 2018.

The hearing was held on August 21, 2019. At that time, the parties moved their previously served written testimony and exhibits into the record, and five hearing exhibits offered by PWSA were admitted as well. PWSA Hearing Exhibit 6 – DEP Consent Order and Agreement, identified and offered for admission by PWSA, was not yet available at the time of the hearing; per the agreement of the parties, the undersigned ALJs ordered PWSA to serve the DEP Consent Order and Agreement as soon as it became available on all the parties. The DEP Consent Order and Agreement was finalized on September 6, 2019 and filed by PWSA on September 9, 2019. Pursuant to the direction of the undersigned ALJs during the hearing, a three-day time period for the filing of any objections to the admission of PWSA Hearing Exh. No. 6 was established. No objections were filed.

On September 13, 2019, a Joint Petition for Partial Settlement (Partial Settlement) executed by PWSA, I&E, OCA, OSBA, Pittsburgh UNITED and PAWC was filed. On September 19, 2019, main briefs were filed PWSA, I&E, OCA, OSBA, and Pittsburgh UNITED. On the same date PAWC filed a letter stating it would not be filing a Main Brief.

On September 30, 2019, Statements in Support of the Partial Settlement were filed by PWSA, I&E, OCA, OSBA and Pittsburgh UNITED. Reply briefs were also filed by these same parties.

² OSBA filed an additional Notice of Appearance on November 14, 2018.

³ I&E filed a corrected Notice of Appearance on November 28, 2018.

THEREFORE,

IT IS ORDERED:

1. That PWSA Hearing Exh. No. 6, attached hereto and made a part hereof, is admitted into evidence.

2. That the records at Docket No. M-2018-2640802, Docket No. M-2018-2640803, Docket No. P-2018-3005037, and Docket No. P-2018-3005039 are closed.

Date: October 7, 2019



Mark A. Hoyer
Deputy Chief Administrative Law Judge



Conrad A. Johnson
Administrative Law Judge

PWSA Hearing Exh. No. 6

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In The Matter Of:

Pittsburgh Water and Sewer Authority	:	Violations of the Pennsylvania Safe
Penn Liberty Plaza 1	:	Drinking Water Act and the Rules and
1200 Penn Avenue	:	Regulations Promulgated Pursuant Thereto
Pittsburgh, PA 15222	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 6th day of SEPTEMBER 2019, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and the 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 Pennsylvania Safe Drinking Water Act, Act of May 1, 1984, P.L. 206, *as amended*, 35 P.S. §§ 721.1-721.17 ("Safe Drinking Water Act"); 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 ("Regulations").

B. PWSA is a municipal authority with a business address of Penn Liberty Plaza 1, 1200 Penn Avenue, Pittsburgh, Pennsylvania 15222. PWSA is a "person," a "supplier of water" and a "public water supplier," as those terms are defined in Section 3 of the Safe Drinking Water Act, 35 P.S. § 721.3, and Section 1 of the Regulations, 25 Pa. Code § 109.1.

C. PWSA leases, operates and is the permittee of a "public water system" and, more specifically, a "community water system," as those terms are defined in Section 3 of the Safe Drinking Water Act, 35 P. S. § 721.3, and Section 1 of the Regulations, 25 Pa. Code § 109.1.

PWSA's public water system consists of water sources, a clearwell and other storage facilities, treatment facilities and a distribution system (collectively, the "System"). PWSA provides drinking water through the System to approximately 520,000 people in the Pittsburgh, Pennsylvania area, including approximately 250,000 residential customers. PWSA operates the System pursuant to multiple public water supply permits issued by the Department and has been assigned Public Water System Identification Number 5020038. The City of Pittsburgh owns the System and leases it to PWSA.

D. Section 4(3) of the Regulations, 25 Pa. Code § 109.4(3), requires public water suppliers to provide and effectively operate and maintain public water system facilities. Section 4(4) of the Regulations, 25 Pa. Code § 109.4(4), requires public water suppliers to take whatever investigative or corrective action is necessary to assure that safe and potable water is continuously supplied to the users of the public water system.

E. PWSA uses a clearwell constructed in approximately 1908 for storage of filtered water prior to the introduction of the water into PWSA's distribution system. In 1998, PWSA contracted Marion Hill Associates to conduct an inspection of the clearwell. The 1998 clearwell inspection found that the structural stability of the clearwell was good overall, but identified several areas of concern including, but not limited to: excessive amounts of sediment that prohibited inspection of the bottom of the tank; debris; infiltrating tree roots; signs of erosion, deterioration and cracks in the concrete walls; leaks in the clearwell equalization chamber; and considerable amounts of rust on the gates for the clearwell and gatehouse, which could make them unmovable. The consultant concluded that the clearwell did not meet current design standards for public water supply finished water storage.

F. PWSA subsequently hired consultants HDR Engineering, Inc. and Malcom Pirnie, Inc. to provide separate but concurrent evaluations and recommendations regarding the clearwell. In November 2008, HDR Engineering, Inc. provided a report to PWSA titled "Pittsburgh Water Treatment Plant Clearwell Improvements, Phase 1- Study". The purpose of the report was to identify available alternatives to address "PWSA's desires to have a clearwell system with the operational flexibility of being able to remove approximately one half of the clearwell from service for cleaning and maintenance while the other half remains in service; and to have the ability to bypass the clearwell and send filtered water directly to the Bruecken Pump Station in emergency situations." In December 2008, Malcom Pirnie, Inc. provided a report to PWSA titled "Clearwell Improvements Phase 1-Study", which also addressed PWSA's expressed need for operational flexibility with the clearwell. Both reports identified viable alternative options and provided cost estimates to PWSA to address the condition of the clearwell as well as the desired operational flexibility.

G. In March 2017, consultant Mott McDonald submitted another report to PWSA entitled "Alternative Evaluation-Clearwell Redundancy Project", which identified additional viable options to remedy the inflexibility of the clearwell with cost estimates.

H. During a three-day inspection in late April 2017, the Department discovered that two access hatches on the clearwell were open and several other hatches were in disrepair, creating possible pathways of surface contamination. The Department required PWSA to take immediate action to secure the manholes on the clearwell with temporary covers. On May 1, 2017, the Department issued a Field Order citing PWSA for failing to effectively operate and maintain its public water facilities and failing to take investigative and corrective action necessary to ensure that safe and potable water is continuously supplied to the users of its system

by, among other things, not adequately responding to the 1998 Marion Hill Associates clearwell inspection report, in violation of 25 Pa. Code §§ 109.4(3) and 109.4(4). In the Field Order, the Department directed PWSA to increase its free chlorine residual, install additional protective and monitoring equipment on the clearwell, and conduct additional monitoring and testing of the clearwell.

I. The violations described in Paragraph H, above, constitute a public nuisance under Section 12 of the Safe Drinking Water Act, 35 P.S. § 721.12, and subject PWSA to a claim for civil penalties under Section 13(g) of the Safe Drinking Water Act, 35 P.S. § 721.13(g).

J. On October 25, 2017, the Department issued an Administrative Order to PWSA directing the Authority to undertake a number of actions including, among other things: to provide to the Department a detailed schedule for the completion of certain longer-term capital improvement projects identified by PWSA to the Department. Two of the identified capital improvement projects were the “Clearwell Emergency Response Project” and the “Washout Disconnection Program”.

K. Pursuant to Section 109.608 of the Regulations, 25 Pa. Code § 109.608, a public water system may not be designed or constructed in a manner which creates a cross-connection. A “cross-connection” is defined in 25 Pa. Code § 109.1 as “[a]n arrangement allowing either a direct or indirect connection through which backflow, including backsiphonage, can occur between the drinking water in a public water system and a system containing a source or potential source of contamination, or allowing treated water to be removed from any public water system, used for any purpose or routed through any device or pipes outside the public water system, and returned to the public water system. The term does not include connections to devices totally within the control of one or more public water systems and connections between

water mains.” A “washout”, as referred to in PWSA’s planned “Washout Disconnection Program”, is a connection between the public water system distribution components and the storm or sanitary sewerage systems utilized for flushing these lines and may indicate the presence of a cross-connection within the public water system. Cross-connections pose a potential threat to public health.

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 5 of the Safe Drinking Water Act, 35 P.S. § 721.5; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. PWSA agrees that the findings in Paragraphs A through K are true and correct and, 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. PWSA shall complete the following actions in accordance with the following schedule:

Clearwell and Related Projects

a. On or before January 1, 2023, PWSA shall submit to the Department a complete and technically sufficient application for a construction permit for a bypass system that

will enable PWSA to remove the clearwell from service and replace it. In the event the Department makes a written request to PWSA to supplement or modify the application, PWSA shall supplement or modify its application as requested by the Department within the time requested.

b. Within two (2) years of the Department's issuance of a construction permit authorizing construction of a clearwell bypass system, PWSA shall complete construction of the bypass system in accordance with the terms and conditions of the permit and shall submit to the Department an original, signed "Certificate of Construction/Modification Completion" form (certification of construction) that meets the requirements of 25 Pa. Code § 109.504(a). In the event the Department notifies PWSA in writing of any deficiencies in PWSA's construction of the bypass system, PWSA shall correct the deficiencies as requested by the Department within the time requested and submit a new certification of construction.

c. To facilitate the clearwell bypass system, PWSA shall rehabilitate or replace Rising Main #3 to PWSA's Highland 2 Reservoir as follows:

(i) On or before September 1, 2020, PWSA shall submit to the Department a complete and technically sufficient application for a construction permit to rehabilitate Rising Main #3;

OR

(ii) On or before March 1, 2021, PWSA shall submit to the Department a complete and technically sufficient application for a construction permit to replace Rising Main #3.

In the event the Department makes a written request to PWSA to supplement or modify an application submitted pursuant to Paragraph 3.c.(i) or 3.c.(ii), above, PWSA shall supplement or modify its application as requested by the Department within the time requested.

d. Within one (1) year of the Department's issuance of a construction permit authorizing the rehabilitation or replacement of Rising Main #3, PWSA shall complete the authorized work in accordance with the terms and conditions of the permit and shall submit to the Department an original, signed "Certificate of Construction/Modification Completion" form (certification of construction) that meets the requirements of 25 Pa. Code § 109.504(a). In the event the Department notifies PWSA in writing of any deficiencies in PWSA's rehabilitation or replacement of Rising Main #3, PWSA shall correct the deficiencies as requested by the Department within the time requested and submit a new certification of construction.

e. On or before June 1, 2021, PWSA shall submit to the Department a complete and technically sufficient application for a construction permit to rehabilitate or replace Rising Main #4 to PWSA's Highland 2 Reservoir to facilitate the clearwell bypass system. In the event the Department makes a written request to PWSA to supplement or modify the application, PWSA shall supplement or modify its application as requested by the Department within the time requested.

f. Within two (2) years of the Department's issuance of a construction permit authorizing the rehabilitation or replacement of Rising Main #4, PWSA shall complete the authorized work in accordance with the terms and conditions of the permit and shall submit to the Department an original, signed "Certificate of Construction/Modification Completion" form (certification of construction) that meets the requirements of 25 Pa. Code § 109.504(a). In the event the Department notifies PWSA in writing of any deficiencies in PWSA's rehabilitation

or replacement of Rising Main #4, PWSA shall correct the deficiencies as requested by the Department within the time requested and submit a new certification of construction.

g. On or before December 30, 2020, PWSA shall submit to the Department a complete and technically sufficient application for a construction permit for a new redundant rising main from the Aspinwall Pump Station to the Lanpher Reservoir to facilitate the clearwell bypass system. In the event the Department makes a written request to PWSA to supplement or modify the application, PWSA shall supplement or modify its application as requested by the Department within the time requested.

h. Within two (2) years of the Department's issuance of a construction permit authorizing the construction of a new redundant rising main from the Aspinwall Pump Station to the Lanpher Reservoir, PWSA shall complete construction of the rising main in accordance with the terms and conditions of the permit and shall submit to the Department an original, signed "Certificate of Construction/Modification Completion" form (certification of construction) that meets the requirements of 25 Pa. Code § 109.504(a). In the event the Department notifies PWSA in writing of any deficiencies in PWSA's construction of the redundant rising main, PWSA shall correct the deficiencies as requested by the Department within the time requested and submit a new certification of construction.

i. On or before June 30, 2020, PWSA shall submit to the Department a complete and technically sufficient application for a construction permit to replace the cover and liner of the Highland 2 Reservoir to facilitate the clearwell bypass system. In the event the Department makes a written request to PWSA to supplement or modify the application, PWSA shall supplement or modify its application as requested by the Department within the time requested.

j. Within eighteen (18) months of the Department's issuance of a construction permit authorizing the replacement of the cover and liner of the Highland 2 Reservoir, PWSA shall replace the cover and liner in accordance with the terms and conditions of the permit and shall submit to the Department an original, signed "Certificate of Construction/Modification Completion" form (certification of construction) that meets the requirements of 25 Pa. Code § 109.504(a). In the event the Department notifies PWSA in writing of any deficiencies in PWSA's replacement of the cover and/or liner, PWSA shall correct the deficiencies as requested by the Department within the time requested and submit a new certification of construction.

k. On or before January 1, 2021, to facilitate the clearwell bypass system, PWSA shall submit to the Department:

(i) A complete and technically sufficient application for a combined pump station to replace the existing Aspinwall and Breucken pump stations;

OR

(ii) Complete and technically sufficient applications for rehabilitation of the existing Aspinwall and Breucken pump stations.

In the event the Department makes a written request to PWSA to supplement or modify the application(s), PWSA shall supplement or modify its application(s) as requested by the Department within the time requested.

l. Within two (2) years of the Department's issuance of a construction permit authorizing PWSA to conduct a project under either Paragraph 3.k.(i) or 3.k.(ii), above, PWSA shall complete the authorized work in accordance with the terms and conditions of the permit and shall submit to the Department an original, signed "Certificate of

Construction/Modification Completion” form (certification of construction) that meets the requirements of 25 Pa. Code § 109.504(a). In the event the Department notifies PWSA in writing of any deficiencies in PWSA’s replacement or rehabilitation of the Aspinwall and Bruecken pump stations, PWSA shall correct the deficiencies as requested by the Department within the time requested and submit a new certification of construction.

m. On or before January 1, 2024, PWSA shall submit to the Department a complete and technically sufficient application for a construction permit to replace the clearwell. In the event the Department makes a written request to PWSA to supplement or modify the application, PWSA shall supplement or modify its application as requested by the Department within the time requested.

n. Within two (2) years of the Department’s issuance of a construction permit authorizing the replacement of the clearwell, PWSA shall complete the authorized work in accordance with the terms and conditions of the permit and shall submit to the Department an original, signed “Certificate of Construction/Modification Completion” form (certification of construction) that meets the requirements of 25 Pa. Code § 109.504(a). In the event the Department notifies PWSA in writing of any deficiencies in PWSA’s replacement of the clearwell, PWSA shall correct the deficiencies as requested by the Department within the time requested and submit a new certification of construction.

o. No later than thirty (30) days after the date of the Department’s issuance of an operation permit authorizing the operation of the new clearwell, PWSA shall begin operating the clearwell in accordance with the permit.

p. For as long as PWSA continues to operate the existing clearwell, PWSA shall continue to monitor turbidity, temperature, pH, log inactivation values and specific

conductance from the clearwell effluent, and NOAA precipitation values, as required by the Field Order issued by the Department on May 1, 2017. PWSA shall maintain the monitoring records on-site. PWSA shall notify the Department within one (1) hour if any turbidity reading from the clearwell effluent exceeds 1.0 NTU.

Cross-connections

q. On or before June 1, 2020, PWSA shall complete an investigation of the locations where valves, blow-offs, meters or other such appurtenances to the distribution system are found within chambers, pits or manholes connected directly or indirectly to any storm drain or sanitary sewer (commonly referred to by PWSA as "washouts") and submit to the Department a report detailing the findings including the number and locations of all such cross-connections within PWSA's System.

r. Within ninety (90) days of PWSA's submission of the report required under Paragraph 3.q., above, PWSA shall submit to the Department a plan and proposed schedule to eliminate all of the identified cross-connections and a written request for a determination by the Department as to whether the requested modification to eliminate each cross-connection identified in the report constitutes a major or minor change.

s. For any modification the Department determines to require a permit, PWSA shall submit a complete and technically sufficient application to the Department for a construction permit within sixty (60) days of the date the Department's written determination is issued to PWSA. In the event the Department makes a written request to PWSA to supplement or modify the application, PWSA shall supplement or modify its application as requested by the Department within the time requested.

t. In accordance with the plan and schedule required under Paragraph 3.r., above, as approved or as modified and approved by the Department, PWSA shall complete the elimination of all identified cross-connections and shall submit to the Department within ninety (90) days of completion a report confirming the elimination of all previously existing cross-connections with confirmatory photographs, dates and details of the corrective work performed.

4. Stipulated Civil Penalties.

a. In the event PWSA fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, PWSA shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of One Hundred Dollars (\$100.00) per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month. The payment shall be made by corporate check or the like made payable to the "Commonwealth of Pennsylvania – Safe Drinking Water Fund" and sent to Renee Diehl, Program Manager, Safe Drinking Water Program, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

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

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

5. Additional Remedies.

a. 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.

b. The remedies provided by this paragraph and Paragraph 4 (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 penalty is paid.

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 PWSA. 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, consultants 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, terminated or otherwise altered by the transfer of any legal or equitable interest in the PWSA public water system or any part thereof.

b. If PWSA intends to transfer any legal or equitable interest in the PWSA public water system 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 Southwest Regional Office of 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 the PWSA System or any part thereof. 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:

Renee Diehl, Program Manager
Safe Drinking Water Program
Department of Environmental Protection
Southwest Regional Office
400 Waterfront Drive
Pittsburgh, Pennsylvania 15222-4745
Telephone: 412.442.4210 Facsimile: 412.442.4242

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

Robert Weimar, Executive Director
Pittsburgh Water and Sewer Authority
Penn Liberty Plaza 1
1200 Penn Avenue
Pittsburgh, PA 15222
Telephone: 412.255.2579

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 first class mail to the above address.

11. Force Majeure.

a. In the event that PWSA 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 circumstance beyond PWSA's control and which PWSA, by the exercise of all reasonable diligence, is unable to prevent, then PWSA 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 PWSA's control. PWSA'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. PWSA shall only be entitled to the benefits of this paragraph if PWSA notifies the Department within five (5) working days by telephone and within ten (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 PWSA to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. PWSA'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 PWSA and other information available

to the Department. In any subsequent litigation, PWSA 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.

12. 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.

13. 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.

14. 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.

15. 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.

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, 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 PWSA may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

18. Resolution. Attached hereto as Appendix A is a resolution of the Board of PWSA authorizing its signatories below to enter into this Consent Order and Agreement on its behalf.

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 PITTSBURGH WATER AND
SEWER AUTHORITY:

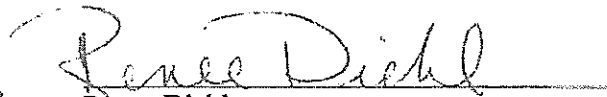


Robert Weimar
Executive Director
Pittsburgh Water and Sewer Authority



David Ries
Attorney for Pittsburgh Water
and Sewer Authority

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Renee Diehl
Environmental Program Manager
Bureau of Safe Drinking Water



Gail Guenther
Assistant Counsel
Southwest Office of Chief Counsel

APPENDIX A



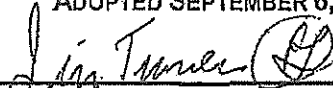
BOARD RESOLUTION ITEM

Originating
Department: Engineering and Construction Phone: 412.255.8800-2291
Department
Contact: Barry King E-mail: BKing@pgh2o.com
Date: 09.06.2019

Resolution No: 163 Authorize the Executive Director to Sign a PA Department of Environmental Protection Consent Order and Agreement To Restore Functionality and Water System Resiliency as well as Modernize The Authority's Facilities

STATEMENT OF THE ISSUE: The Pennsylvania Department of Environmental Protection in its role of Public Water Supply Oversight and Regulatory Compliance Has Determined that PWSA's facilities must be restored and modernized to comply with their regulations. The Executive Director requests Board Approval to execute a Consent Order and Agreement (COA) to establish the specific requirements and schedule for these improvements.

FINAL BOARD APPROVAL:
ADOPTED SEPTEMBER 6, 2019


James Turner, Secretary

M-2018-2640802 M-2018-2640803 IMPLEMENTATION OF CHAPTER 32 OF THE PUBLIC UTILITY CODE REGARDING PITTSBURGH WATER AND SEWER AUTHORITY - STAGE 1

P-2018-3005037 P-2018-3005039 PETITION OF THE PITTSBURGH WATER AND SEWER AUTHORITY FOR APPROVAL OF ITS LONG-TERM INFRASTRUCTURE IMPROVEMENT PLAN

Revised on 10/7/19

*DANIEL CLEARFIELD ESQUIRE
*DEANNE M O'DELL ESQUIRE
*KAREN O MOURY ESQUIRE
*CARL SHULTZ ESQUIRE
SARAH STONER ESQUIRE
ECKERT SEAMANS CHERIN & MELLOTT
LLC
213 MARKET STREET 8TH FLOOR
HARRISBURG PA 17101
717.237.6000

***ACCEPTS E-SERVICE**

*Representing Pittsburgh Water And Sewer
Authority*

ROBERT A WEIMAR
PITTSBURGH WATER & SEWER
AUTHORITY
PENN LIBERTY PLAZA
1200 PENN AVENUE
PITTSBURGH PA 15222
412.255.2423

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