

RESOLUTION NO. 104-07

ALLEGHENY COUNTY HEALTH DEPARTMENT

IN THE MATTER OF:

West Mifflin Sanitary Sewer

Municipal Authority

Sewage Article XIV

Allegheny County

FIRST AMENDMENT TO ADMINISTRATIVE CONSENT ORDER

This First Amendment to the Administrative Consent Order ("First Amendment"), is entered into this 12th day of July, 2007 by and between the Allegheny County Health Department (hereinafter "ACHD") and the West Mifflin Sanitary Sewer Municipal Authority (hereinafter "Municipality") shall be deemed to have been in effect as of May 31, 2007.

Findings The ACHD has found, and the Municipality and the ACHD (hereinafter "Parties") agree, that the following findings are true and correct:

- A. On February 27, 2004, the ACHD and the Municipality entered into an Administrative Consent Order (hereinafter "ACO").
- B. Pursuant to Paragraph 14 of the ACO, by June 1, 2007 the Municipality was required to begin a program of flow monitoring of its sanitary sewer system.
- C. Under a Consent Decree with the ACHD, the Pennsylvania Department of Environmental Protection (PADEP), and the Environmental Protection Agency (EPA), lodged in the Western District of Pennsylvania on May 31, 2007 (hereinafter "Consent Decree"), the Allegheny County Sanitary Authority (Hereinafter "ALCOSAN") has agreed to install flow monitors and obtain flow data to assist the Municipality fulfill the flow monitoring requirement of the ACO.
- D. Flow monitoring by ALCOSAN in the Municipality will be a component of a regional flow monitoring plan (hereinafter "RFMP"), required and approved under the Consent Decree, designed to provide data sufficient for the Municipality to develop the feasibility analysis required by Paragraph 15 of the ACO.
- E. Under any RFMP implemented by ALCOSAN, the Municipality, as required pursuant to the ACO, will remain responsible for a quality analysis and quality control analysis (hereinafter "QA/QC Analysis") of all flow data from Municipal Flow Meters, as defined in the Consent Decree.
- F. Provided the Municipality conducts the QA/QC Analysis of all flow monitoring data recorded by ALCOSAN from the Municipal Flow Meters pertaining to the Municipality's flow, such flow monitoring conducted by ALCOSAN under the RFMP shall satisfy the Municipality's obligation under Paragraph 14 of the ACO.
- G. Implementation of a comprehensive, coordinated RFMP requires extension of the initiation of flow monitoring under Paragraph 14 from June 1, 2007 until February 1, 2008.
- H. The Municipality may rely on flow monitoring data to develop the Operation and Maintenance Program Plan (hereinafter "O&M Plan") required by Paragraph 17 of the ACO.
- I. The modified flow monitoring deadline may affect the ability of the

Municipality to meet the current deadline for the submission of its O&M Plan in.

J. The Parties are amenable to extending the deadline for the development and submission of the O&M Plan from March 31, 2009 to March 31, 2010.

K. Paragraph 15.d of the ACO requires the Municipality to submit a Feasibility Study six (6) months after ALCOSAN submits a Wet Weather Plan to EPA and/or PADEP under the Consent Decree.

L. The Consent Decree requires ALCOSAN to submit a Wet Weather Plan by September 30, 2012.

M. Under the ACO, the Municipality is required to submit a Feasibility Study within six months of the date ALCOSAN submits a Wet Weather Plan to EPA and PADEP. Currently the deadline the Municipality's Feasibility Study is no later than March 31, 2013.

N. Under Paragraph 39 of the ACO, the obligations of the ACO terminate on June 30, 2012.

O. To assure that the Municipality will have sufficient time to submit the Feasibility Study under the ACO, the termination date of the ACO must be extended.

After full and complete negotiation of all matters set forth in this First Amendment, 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 ACHD and AGREED to by the Municipality as follows:

1. Authority. This First Amendment is an Order of the ACHD authorized and issued pursuant to the Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 P.S. § 12001 et seq. ("Act 315"), Sections 12010 and 12012, and Article XIV, Rules and Regulations of the Allegheny County Health Department for Sewer Management, §§ 1404.1 and 1404.2.

2. The first sentence of Paragraph 14.a of the ACO is hereby replaced with the following:

"14.a. On February 1, 2008, the Municipality, shall begin a program of flow monitoring of the Municipality's sanitary sewer system, to determine the average dry and peak wet weather flows conveyed directly or indirectly from the Municipality's conveyance system to the ALCOSAN sewer system."

3. The first sentence of Paragraph 17 of the ACO is hereby modified as follows:

<![if !vml]> <![endif]>"17. By March 31, 2010, the Municipality shall submit to the ACHD for review and approval..."

4. The first sentence of Paragraph 39 of the ACO is hereby modified as follows:

<![if !vml]> <![endif]><![if !vml]>"39. The obligations of this ACO shall terminate on March 30, 2015 or when ACHD determines that the terms and conditions described in this ACO have been complied with, which ever occurs first."

5. <![endif]>All other provisions of the ACO not explicitly revised herein remain unchanged.

<![if !supportLists]>6.

<![endif]>Attached hereto as Appendix H is a Resolution of the Municipality, authorizing its representatives whose signatures appear below, to enter into this First Amendment to the ACO on its behalf.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to the ACO to be executed by their duly authorized representatives. The undersigned representatives of the Municipality certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that they are authorized to execute this First Amendment on behalf of the Municipality; that the Municipality consents to the entry of this First Amendment as a final ORDER of the ACHD; and that the Municipality hereby knowingly waives its right to appeal this First Amendment and to challenge its content or validity, which rights may be available under Article XI of the Allegheny County Health Department's Rules and Regulations for Hearings and Appeals; the Administrative Agency Law, 2 Pa.C.S. 1103(a), Chapters 5A and 7A; or any other provision of law. Signature by the Municipality's Solicitor certifies only that this First Amendment has been signed after consulting with counsel.

FOR THE ALLEGHENY COUNTY HEALTH DEPARTMENT:

Bruce W. Dixon, M.D. Director

Henry Miller, III, Esq. Solicitor

Rebecca Morris-Chatta, Esq. Assistant Solicitor

FOR THE MUNICIPALITY:

ATTEST: Rick Manspeaker, Secretary

WEST MIFFLIN SANITARY SEWER MUNICIPAL AUTHORITY: Albert J. Kopay, Jr.,
Chairman

Date 7/12/2007

Richard Babjak, Vice-Chairman

Roger Foley, Jr., Esq.. Solicitor