

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

**IN THE MATTER OF** : **Docket No. CWA-03-2008-0326**  
: **The Municipality of Penn Hills,** : **CONSENT AGREEMENT AND**  
: **Respondent.** : **FINAL ORDER**

**I. PRELIMINARY STATEMENT AND STATUTORY AUTHORITY**

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and The Municipality of Penn Hills ("Penn Hills", "Municipality", or "Respondent") pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules")*, 40 C.F.R. Part 22. The parties having agreed to settlement of violations of the Clean Water Act by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) & (3).

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

3. Pursuant to the Debt Collection Improvement Act of 1996, codified at 28 U.S.C. § 2461, any person who has violated any NPDES permit condition or limitation after January 30, 1997 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring between January 30, 1997 and March 15, 2004 up to a total penalty amount of \$137,500.

4. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004), any person who has violated any NPDES permit condition or limitation after March 15, 2004 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring after March 15, 2004 up to a total penalty amount of \$157,500.

## **II. FINDINGS OF FACT and CONCLUSIONS OF LAW**

5. The Municipality of Penn Hills ("Municipality" or "Penn Hills") is a subdivision of the Commonwealth of Pennsylvania, formed under the laws of the Commonwealth of Pennsylvania, and is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), and therefore a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

6. Penn Hills owns and operates a wastewater collection system ("the Collection System") located in Penn Hills, Pennsylvania, which collects and conveys sanitary sewage and industrial waste to sanitary and/or combined sewerage facilities owned and operated by the Allegheny County Sanitary Authority (ALCOSAN) whose mailing address is 3300 Preble Avenue, Pittsburgh, Pennsylvania, 15233-1092. The Collection System includes pipes, force mains, sanitary sewer lines, pump stations, manholes, and other real and personal property and appurtenances thereto designed to convey sanitary wastewater (including sewage) to the collection system.

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the "discharge of pollutants" except in compliance with certain sections of the Act, including Section 402 of the Act, 33 U.S.C. § 1342.

8. Title 40 C.F.R. § 122.2 defines "discharge of a pollutant" to include any addition of any pollutant or combination of pollutants to waters of the United States from any point source.

9. Quarterly Reports submitted by Penn Hills to EPA pursuant to a 1998 Consent Decree among Penn Hills, the United States and the Pennsylvania Department of Environmental Protection ("PADEP") and Penn Hills' response to a Section 308 Information Request indicate that Penn Hills discharged untreated sewage from its collection system to navigable waters of the United States within the meaning of 40 C.F.R. § 122.2 between May 4, 2003 through August 20, 2007.

10. The sanitary sewer overflows from Penn Hills' collection system constitute unauthorized discharges of pollutants in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

### **III. CONSENT AGREEMENT AND FINAL ORDER**

11. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above, and waives any defenses it might have as to jurisdiction and venue.
12. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
13. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
14. Each party to this action shall bear its own costs and attorney fees.
15. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
16. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Commonwealth of Pennsylvania regarding this action, and will mail a copy of this document to the appropriate Pennsylvania official upon its execution.
17. Based upon the foregoing and having taken in account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000) in full and final settlement of EPA's claims for civil penalties for the violations described in Paragraph 9 above between May 4, 2003 and August 20, 2007, as alleged herein.
18. Respondent shall pay an administrative civil penalty in the amount of Fifteen Thousand Dollars (\$15,000) for violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31© by mailing a cashier's or certified check for the penalty to "Treasurer, United States of America" along with the signed CAFO to the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

19. Respondent shall send notice of such payment, including a copy of its check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Yvette C. Roundtree  
Mail Code 3RC20  
Office of Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

20. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinances, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, *et seq.*, or any regulations promulgated thereunder.

21. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty

that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue (40 C.F.R. § 13.11(b)). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days (40 C.F.R. § 13.11(c)). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent (31 C.F.R. § 901.9(d)).

22. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

23. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision or law.

24. Nothing in this CAFO shall be construed to waive or otherwise limit the ability of Respondent to raise legal and factual defenses in any future action.

25. The penalty specified in Paragraph 17, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

26. Entry of this CAFO is a final settlement of all civil violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for claims made in this CAFO if EPA obtains evidence that the information and/or representations of the Respondent are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

27. The undersigned Representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

28. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

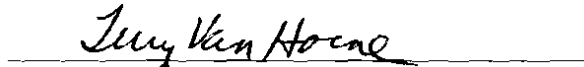
**V. EFFECTIVE DATE**

29. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period has concluded. This CAFO will become final 30 days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT THE MUNICIPALITY OF PENN HILLS:

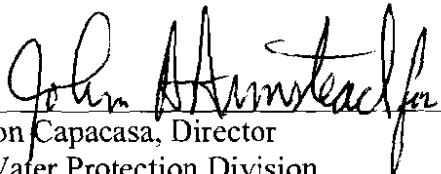
  
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Anthony DeLuca, Jr., Mayor

Witnessed By:

  
\_\_\_\_\_  
Terry Van Horn, Manager

SO ORDERED, pursuant to 33 U.S.C. § 1319(g) and 40 C.F.R. Part 22,

this 29 day of September, 2008.

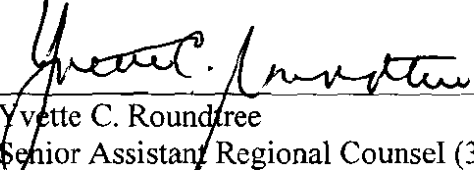
  
\_\_\_\_\_  
Jon Capacasa, Director  
Water Protection Division  
U.S. EPA, Region III

**CERTIFICATE OF SERVICE**

I hereby certify that the original Consent Agreement and Final Order was, on the date noted below, hand-delivered to the Regional Hearing Clerk, EPA Region III, and that a true and correct copy was sent via first class mail, postage prepaid, to the following person:

Bonnie Brimmeier, Esquire  
Brimmeier & Associates  
104 McKnight Park Drive  
Pittsburgh, PA 15237

9-29-08  
Date

  
Yvette C. Roundtree  
Senior Assistant Regional Counsel (3RC20)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19102  
(215) 814-2685





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

September 29, 2008

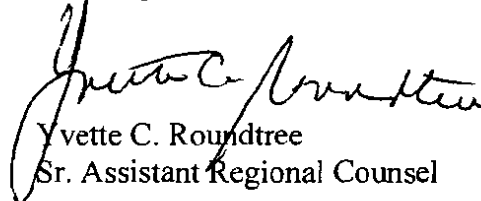
Lori Weidner, Cincinnati Finance Management Center (CFMC)  
U.S. EPA  
Cincinnati Finance Center  
26 W. Martin Luther King Drive  
Cincinnati, OH 45268

Re: Municipality of Penn Hills  
Consent Agreement and Final Order

Dear Ms. Weidner:

Enclosed please find a copy of the above referenced Consent Agreement and Final Order ("CAFO"), the original of which was filed today with the Regional Hearing Clerk. Also enclosed is the original completed Enforcement Accounts Receivable Control Number Form ("EARCNF").

Sincerely,

  
Yvette C. Roundtree  
Sr. Assistant Regional Counsel

Enclosure

