

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

Municipal Sanitary Authority of the City of New Kensington, 120 Logans Ferry Road New Kensington, PA 15068,	:	Proceeding Under Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a)
City of Arnold 1859 Fifth Avenue New Kensington, PA 15068,	:	Docket Nos. CWA-03-2009-0230, CWA-03-2009-0231, CWA-03-2009-0232,
City of Lower Burrell 2800 Bethel Street Lower Burrell, PA 15068,	:	CWA-03-2009-0233, CWA-03-2009-0234, and CWA-03-2009-0235
Lower Burrell Municipal Authority Schreiber and Bethel Street Lower Burrell, PA 15068,	:	
City of New Kensington, 301 Eleventh Street New Kensington, PA 15068, and	:	Administrative Order For Compliance On Consent
Plum Borough Municipal Authority 4555 New Texas Road Pittsburgh, PA 15239,	:	
Respondents.	:	

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance on Consent (AOC) is issued under the authority vested in the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33

U.S.C. § 1319(a). The Administrator of the EPA has delegated this authority to the Regional Administrator of EPA Region III, who in turn has redelegated it to the Director of the Water Protection Division of EPA Region III. This AOC shall supersede the previous Administrative Orders issued to the Municipal Sanitary Authority of the City of New Kensington, hereinafter referred to as ("MSANK") and the City of Arnold by EPA on, respectively, September 26, and August 30, 2007. This Administrative Order on Consent ("AOC") is entered into this _____ day of _____, 2009, by and between the United States Environmental Protection Agency ("EPA") and, MSANK, the City of Arnold, the City of Lower Burrell, the City of New Kensington, and the Borough of Plum, severally.

II. FINDINGS

2. Respondents neither admit nor deny the following Findings.
3. Each of the Respondents: the City of Arnold, the City of Lower Burrell, the Lower Burrell Municipal Authority, the City of New Kensington, the Plum Borough Municipal Authority (hereinafter each individually referred to as "Municipality" and collectively as "Municipalities"), and MSANK are persons as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5).
4. Section 301(a) of the Act, 33 U.S.C. § 1311(a) prohibits the discharge of any pollutant (other than dredged or fill material) by any person from a point source into waters of the United States except in compliance with the

National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.

5. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines "pollutant" to include, inter alia, sewage, sewage sludge, biological material and industrial, municipal and agricultural waste.

6. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

7. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well [or] discrete fissure from which pollutants are or may be discharged."

8. A combined sewer system (CSS) is a wastewater collection system owned by a State or municipality (as defined by Section 502(4) of the CWA) which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a publicly owned treatment works (POTW) (as defined in 40 C.F.R. §403.3). A combined sewer overflow (CSO) is the discharge from a CSS at a point prior to the POTW treatment plant. CSOs are point sources subject to NPDES permit requirements and other requirements of the CWA, including both technology-based and water quality-based requirements.

9. Section 402(q)(1) of the Act, 33 U.S.C. § 1342(q)(1), provides that each NPDES permit, order, or decree issued under Section 402 after December 21, 2000, for a discharge from a municipal combined storm and sanitary sewer shall conform to EPA's Combined Sewer Overflow Control Policy, April 11, 1994, 59 Fed. Reg. 18688-18698 (CSO Policy).

10. The purpose of the CSO Policy is "to coordinate the planning, selection, design and implementation of CSO management practices and controls to meet the requirements of the CWA and to involve the public fully during the decision making process." 59 Fed. Reg. 18688, 18689 (April 19, 1994).

Among the objectives of the CSO Policy is "[t]o bring all wet weather CSO discharge points into compliance with the technology-based and water quality-based requirements of the CWA." *Id.*

11. The CSO Policy requires: 1) implementation of the nine minimum technology-based controls (NMCs) set forth in the CSO Policy, no later than January 1, 1997; and 2) development and implementation of a long-term CSO control plan (LTCP) that will ultimately result in compliance with the requirements of the CWA, including applicable water quality standards. The LTCP must include a post-construction water quality monitoring program adequate to verify compliance with water quality standards and protection of designated uses as well as to ascertain the effectiveness of CSO controls.

12. The City of Arnold and MSANK each have CSSs that experience periodic

discharges of untreated sewage and storm water from CSOs under their ownership and located within their jurisdictional borders. These CSOs discharge to the Allegheny River, a waters of the United States.

13. The City of Lower Burrell routes sanitary wastewater through a separate sanitary collection system that the Lower Burrell Municipal Authority owns and which contributes to the discharge of untreated sewage and storm water through the MSANK's CSOs. The Plum Borough Municipal Authority routes sanitary wastewater through its collection system that contributes to the discharge of untreated sewage and storm water through the City of Arnold's and MSANK's CSOs. The City of New Kensington owns and operates a storm water collection system that contribute to the discharge of untreated sewage and storm water through the City of Arnold's and MSANK's CSOs.

14. Therefore, each Respondent "discharges" "pollutants" from a "point source" as those terms are defined under Section 502 of the CWA, 33 U.S.C. § 1362.

15. The CSO Policy contemplates that all municipalities tributary to a CSS operated by a different municipality or authority will cooperate with the development and implementation of an LTCP.

16. On October 2, 2007, MSANK received an Administrative Order from the EPA alleging that MSANK failed to implement an adequate LTCP. EPA determined the LTCP to be inadequate because, among other things, it did

not specify how MSANK would measure the effectiveness of the CSO controls and it did not provide interim milestones and a financing plan to fund the projects required to address the CSOs.

17. In September 2007, the City of Arnold received an Administrative Order from the EPA that alleged that the City had failed to implement an approved LTCP. The Pennsylvania Department of Environmental Protection ("PADEP" or "Department") has informed EPA that PADEP is unsure that the City has correctly identified all of the CSOs from the City's CSS.

18. The Respondents have agreed to provide the information necessary to the development of an approvable LTCP(s) to control CSOs, to coordinate with each other, and to implement the LTCP(s).

III. ORDER FOR COMPLIANCE

Therefore, this _____ day of _____, 2009, EPA ORDERS and Respondents consent to conduct the following activities:

WORK TO BE PERFORMED

19. As set forth below and in accordance with the provisions of Appendices A through H, Respondents shall perform the work described in Paragraphs 20 through 31. Appendices A through H are attached hereto and incorporated into this AOC by reference,

20. Public Participation Plan - In accordance with the requirements set forth

in Appendix A hereto, the Respondents shall within six (6) months of the effective date of this AOC develop and submit to EPA and PADEP for review and comment a Public Participation Plan to ensure that the public served by the Regional Sewer System is actively involved in the development of the LTCPs.

21. Provide Information to the Public - In accordance with the requirements set forth in Appendix A hereto, starting within sixty (60) days of the effective date of this AOC, each Municipality and MSANK shall use informational newsletters and meetings to convey information to citizens within their respective sewersheds on the status of the LTCPs, municipal cooperation, and steps that citizens may take to protect the receiving waters.

22. Signage - In accordance with the requirements set forth in Appendix A hereto, within six (6) months of the effective date of this AOC, the City of Arnold and MSANK shall post signs adjacent to each of their CSO locations.

23. Internet Information - In accordance with the requirements set forth in Appendix A hereto, beginning within six (6) months of the effective date of this AOC, each Municipality shall establish and provide to MSANK on a semiannual basis the information needed to update the MSANK's web site in accordance with existing protocols for the respective Municipalities. In accordance with the requirements set forth in Appendix A hereto, beginning within six (6) months of the effective date of this AOC, each Municipality,

with the exception of the City of Lower Burrell and the Lower Burrell Municipal Authority, shall establish and provide to the City of Arnold on a semiannual basis the information needed to update the City of Arnold's web site in accordance with existing protocols for the respective Municipalities.

24. Sewer System Investigation - In accordance with the requirements set forth in Appendix B hereto, within one (1) year from the effective date of this AOC, each Municipality and MSANK shall complete the components of an investigation of its sewer system as set out in Appendix B, Paragraphs 48, 49, and 50.

25. Sewer System Deficiency Corrections - In accordance with the requirements set forth in Appendix B, Paragraph 51, hereto, within twenty-four (24) months from the effective date of this AOC, each Municipality and MSANK, with the exception of the defects and conditions described in Appendix B, Subparagraphs 51.a.iv and 51.b.iii, shall initiate corrections to their combined and separate sanitary sewer systems. Each Municipality and MSANK shall initiate the correction of the defects and conditions described in Appendix B, Subparagraphs 51.a.iv and 51.b.iii within 60 (sixty) days of discovery. For the purpose of this AOC, "initiate" shall mean put out for public bid.

26. Sewer system Mapping - In accordance with the requirements of Appendix C hereto, within one (1) year of the effective date of this AOC, the

Respondents shall develop a comprehensive sewer system map.

27. Flow and Rainfall Monitoring - In accordance with the requirements of Appendix D hereto, within nine (9) months of completing the mapping required by Paragraph 26, MSANK and the City of Arnold shall submit a plan to conduct flow and rainfall monitoring. Upon completion of flow and rainfall monitoring in accordance with the requirements of Appendix D, they shall submit a report of the results of such flow and rainfall monitoring.

28. Combined Sewer Overflow Pollutant Monitoring – Concurrent with the flow monitoring required by Paragraph 27 and in accordance with the requirements of Appendix E hereto, MSANK and the City of Arnold shall develop and implement a combined sewer overflow pollutant monitoring plan.

29. Hydrologic and Hydraulic Model - In accordance with the requirements of Appendix F hereto, within six (6) months of completion of the flow monitoring required by Paragraph 27, the City of Arnold and MSANK shall develop and implement a hydrologic and hydraulic model to simulate the hydrologics and hydraulics of flows in the Regional Collection System. The “Regional Collection System” shall mean a collection system(s), or a portion of a collection system, that conveys wastewaters to the MSANK Sewage Treatment Plant (“STP”) and/or to any of the CSOs that are components of the combined sewer system operated either by MSANK or by the City of Arnold.

30. LTCP Development

a. Within twenty-four (24) months of completion of the flow and rainfall monitoring required by paragraph 27, MSANK and the City of Arnold, shall, in accordance with the terms of this AOC and Appendix G, submit final LTCPs to EPA and PADEP for review. Plum Borough and the Cities of New Kensington and Lower Burrell agree to provide data to assist with the development of the LTCP.

b. For purposes of the tasks required by provisions set out in this AOC and for the Appendices, the Long Term Control Plan submitted by MSANK or the City of Arnold to EPA and/or PADEP may also address other wet weather problems including, but not limited to, hydraulic overloading of collection system, sanitary sewer overflows (“SSOs”), basement backups, and/or bypassing not in accordance with permit terms within the MSANK or the City of Arnold sewersheds.

31. NMCs - Within sixty (60) days of this AOC's effective date, MSANK, the City of New Kensington, and the City of Arnold will submit a report to EPA describing how the Respondents have implemented the NMCs for the Regional Collection System to date and what the results have been. Appendix H states the requirements for implementing the NMCs.

IV. GENERAL PROVISIONS

32. Issuance of this Order shall not be deemed an election by EPA to forego

any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA retains the right to seek any remedy available to it under the law for any violations cited in this Order.

33. Compliance with the terms and conditions of this Order shall not in any way be construed to relieve any Respondent of its obligation to comply with all applicable provision of federal, state, or local law, nor shall it be construed to be a determination of, any issue related to any federal, state, or local permit. Compliance with this Order shall not be a defense to any actions subsequently commenced for any violation of federal laws and regulations administered by EPA, and it is the responsibility of the Respondents to comply with such laws and regulations. This Order does not constitute a waiver or modification of any of the requirements of the CWA, including the terms or conditions of any issued permit, all of which remain in full force and effect.

34. Violation of the terms of this Order may result in further EPA enforcement action for the underlying violations including, but not limited to, initiation of judicial proceedings that allow for civil penalties of up to \$32,500 per day, 33 U.S.C. §§ 1319(b) and (d), for each day of violation, 40 C.F.R. Part 19, and/or for the criminal sanctions of imprisonment and fines of up to \$50,000 per day, 33 U.S.C. § 1319(c). Any penalties may be increased

pursuant to 40 C.F.R. Part 19. If any Respondent fails to comply with the requirements of this AOC, after good faith efforts by the other Respondent to seek compliance by the non-complying Respondent and upon notice to EPA by another Respondent, EPA will use its best efforts to see that the non-complying Respondent returns to compliance.

35. Each of the undersigned representatives of Respondents certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this AOC and to execute and legally bind that party to it.

36. Effect of AOC - In signing this AOC, MSANK and each Municipality specifically reserves and does not waive any rights it may otherwise have under any existing Operating Agreements entered into by such Municipality and MSANK. In the event that there may be a conflict between the provisions of this AOC and any provisions of any such Operating Agreement, the provisions of this AOC shall apply and supersede those of any such Operating Agreement.

37. Data Collection and Submission - Unless a Paragraph provides otherwise, all data collected shall be retained and shall be provided to EPA and PADEP upon request by the EPA or DEP. The Municipalities and MSANK shall provide the data within fifteen (15) days upon receiving a request to the EPA and PADEP at the addresses listed in Paragraph 40. GIS data shall be stored and shall be provided in Environmental Systems Research Institute

(ESRI)-compatible format, as specified in Appendix C. The CCTV data collected under Paragraph 24 shall be stored in digital format and shall be provided in that format. All other data collected shall be formatted and stored in a relational database (Open Database Configuration compliant), such as Microsoft Access, Microsoft Excel or equivalent, and provided in that format. Flows shall be calculated and reported as millions of gallons per day (MGD), rather than cubic feet per second (CFS). Data shall be expressed to three (3) decimal places (x.xxx).

38. Combination of Submissions - This AOC is not intended to preclude any of the Respondents from agreeing among themselves, as a matter of efficiency, that one or more of Respondents may take the lead in producing any of the reports, plans, maps, or other submissions required by this AOC. In addition, this AOC is not intended to preclude any of the Respondents from agreeing among themselves, as a matter of efficiency, to jointly produce any of the reports, plans, maps, or other submissions this AOC requires them to individually produce. Such agreement(s), however, does not waive the individual Respondent's responsibility to meet the requirements of this AOC and the Clean Water Act. Said agreement(s) shall not serve as a defense to any enforcement action concerning violations of the Act.

39. Certification - All documents or reports submitted to EPA by a Respondent pursuant to this AOC shall be signed by a ranking elected official

of the Respondent, or a person who has been duly authorized as a representative of such executive officer or elected official in accordance with 40 C.F.R. § 122.22(b), and shall include the following certification that the information contained in such document or report is true, accurate, and not misleading:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

40. Correspondence with EPA - All correspondence with the EPA concerning this AOC, including the submission of plans and reports, shall be sent to the following address:

Robert Campbell
NPDES Enforcement Branch (3WP42)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

All correspondence, including the submission of plans and reports, with EPA shall be copied for the PA Department of Environmental Protection and sent to the following address:

Paul Eiswerth, CSO Coordinator
Pennsylvania Department of Environmental
Protection
400 Waterfront Drive,
Pittsburgh, PA 15222-4745
Phone: 412-442-4000 Fax: 412-442-4328

41. Correspondence with the Municipalities and Authorities - All

correspondence with the Municipalities and MSANK concerning this AOC shall
be addressed to:

Daniel H. Rowe, Jr., Manager
Municipal Sanitary Authority
of the City of New Kensington
120 Logans Ferry Road
New Kensington, PA 15068

Mayor
City of Arnold
1859 Fifth Avenue
New Kensington, PA 15068

Mayor
City of Lower Burrell
2800 Bethel Street
Lower Burrell, PA 15068

Chairperson
Lower Burrell Municipal Authority
Schreiber and Bethel Street
Lower Burrell, PA 15068

Mayor
City of New Kensington
301 Eleventh Street
New Kensington, PA 15068

and

Chairman
Plum Borough Municipal Authority
4575 New Texas Road
Pittsburgh, PA 15239

Each Municipality and MSANK shall notify the EPA 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 AOC, including its enforcement, may be made by mailing a copy by first class mail to the above addresses.

42. *Force Majeure*

a. Respondents agree to perform all requirements of this AOC within the time limits established under this AOC unless the performance is delayed by a *force majeure* event. For purposes of this AOC, a *force majeure* event shall mean any event arising from causes beyond the control of Respondents or any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this AOC despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include the financial inability to complete the work or increased cost of performance.

b. If any event occurs or has occurred that may delay the performance of any obligation under this AOC, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within seven (7) days of when Respondents first knew that the event might cause a delay. Within ten (10)

days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to minimize the delay; a schedule of implementation of any measures to be taken to prevent or mitigate the delay or effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

c. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this AOC that are affected by the *force majeure* event will be extended by EPA for such time as EPA determines is necessary to complete those obligations. An extension of time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision.

43. Modifications - No changes, additions, modifications, or amendments of

this AOC shall be effective unless they are set out in writing and signed by the parties hereto affected by the change, modification or amendment.

44. Effective Date - The effective date of this Order as to each Respondent shall be the date it is signed by EPA.

45. Termination - The obligations of this AOC for a Municipality or MSANK shall terminate when EPA determines that the Municipality or MSANK has complied with the terms and conditions of this AOC.

**FOR THE MUNICIPAL SANITARY AUTHORITY OF
THE CITY OF NEW KENSINGTON**

John J. Murok CHAIRMAN NASANK

Name
Title

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NPDES ENFORCEMENT BRANCH
(3WT-42)

Daniel O'Fulach

Name SECRETARY
Title

[Signature]

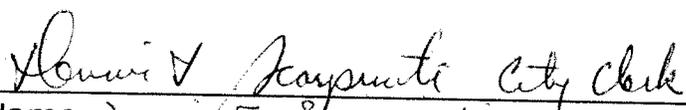
Name
Attorney for the Municipality

FOR THE CITY OF NEW KENSINGTON



Name Frank E. Linc

Title Mayor



Name Dennis F. Scarpiniti

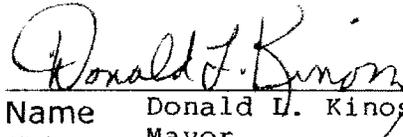
Title city clerk



Name

Attorney for the Municipality

FOR THE CITY OF LOWER BURRELL


As authorized by Council 6-8-09
Name Donald U. Kinosz
Title Mayor


Name Kelly Biddle Cook
Title City Clerk


Name Stephen J. Jakopiec
Attorney for the Municipality

FOR THE LOWER BURRELL MUNICIPAL AUTHORITY

Edward Bloch, CHAIRMAN
Name EDWARD BLOCH
Title

DAVID A. WOHLBER, SECRETARY
Name DAVID A. WOHLBER
Title

R. E. Valasek
Name R. E. VALASEK
Attorney for the Authority

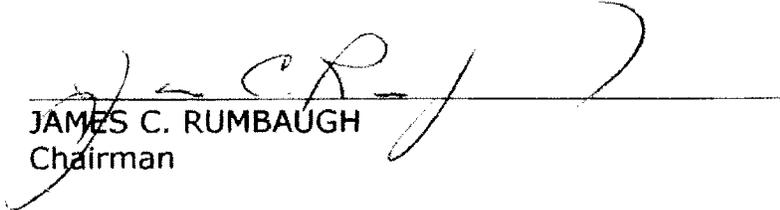
FOR THE CITY OF ARNOLD

John Campbell Mayor
Name
Title

Oscar Lundy City Clerk
Name
Title

J.A.C. John A. Ceraso
Name
Attorney for the Municipality

FOR THE PLUM BOROUGH MUNICIPAL AUTHORITY



JAMES C. RUMBAUGH
Chairman



HOWARD THEIS
Manager



Name BRUCE E. DICE
Attorney for the Authority

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

A handwritten signature in black ink, appearing to read "Jon Capacasa", is written over a horizontal line.

JON CAPACASA
Director
Water Protection Division