



SOUTHWEST REGIONAL OFFICE

October 27, 2014, 2014

**CERTIFIED MAIL NO. 7000 1670 0005 1026 1914**

Upper Yoder Township Supervisors  
302 Elim Street  
Johnstown, PA 15905

Re: Executed Consent Order and Agreement  
Elimination of Sanitary Sewer Overflows

Dear Township Supervisors;

Enclosed is a copy of the Consent Order and Agreement signed and executed by the Department. Please contact me at 412.442.5807 or email [sdemanski@pa.gov](mailto:sdemanski@pa.gov) if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Stuart Demanski". The signature is stylized and cursive.

Stuart Demanski  
Compliance Specialist

Enclosure

cc. Robert A. Shahade, Attorney

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Upper Yoder Township Authority  
Cambria County

: Violations of the Clean  
Streams Law

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this day 20<sup>th</sup> of October, 2014, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "Department") and Upper Yoder Township Authority ("hereinafter "UYTA").

A. The Department is the agency of the Commonwealth with the duty and authority to administer and enforce the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, *as amended* ("Clean Streams Law"), 35 P.S. §§ 691.1001; Section 1917-A of the Administrative Code, the Act of April 9, 1929, P.L. 177, *as amended* ("Administrative Code"), 71 P.S. § 510-17A; and the rules and regulations promulgated thereunder ("Rules and Regulations").

B. UYTA is a municipal authority formed pursuant to the Municipal Authorities Act of 1945, Act of May 2, 1945, P.L. 382, No. 164, as amended, 53 P.S. §§ 301-322 ("Municipal Authorities Act") and is a municipality as defined by Section 1 of the Clean Streams Law, 35 P.S. § 691.1. It has a mailing address of Upper Yoder Township Authority, 302 Elim Street, Johnstown, PA 15905.

C. UYTA owns and operates a separate sanitary sewer system ("Sewer System") that conveys sewage to the Johnstown Redevelopment Authority ("JRA") sanitary sewer system for treatment at JRA's Dornick Point Sewage Treatment Plant ("STP") in West Taylor Township, Cambria County. The Dornick Point STP treats sewage from UYTA and approximately 19 other municipalities in the Johnstown area, collectively referred to as the "Communities."

**Sewage Overflows**

D. Section 94.1 of the Rules and Regulations, 25 Pa. Code § 94.1, defines a sanitary sewer overflow ("SSO") as "[a]n intermittent overflow of wastewater, or other untreated discharge from a separate sanitary sewer system (which is not a combined sewer system), which results from a flow in excess of the carrying capacity of the system or from some other cause prior to reaching the headworks of the plant."

E. SSOs are not authorized under any permit, statute, rule or regulation.

F. UYTA periodically has SSOs from its Sewer System to waters of the Commonwealth. These SSOs occur because the Sewer System periodically receives flows exceeding its hydraulic capacity.

G. Excessive flows from the Sewer System also contribute to the hydraulic overloading of the JRA sanitary sewer system and the Dornick Point STP resulting in SSOs discharging to waters of the Commonwealth from the JRA sanitary sewer system.

H. Each SSO discharge, as described in Paragraphs F and G, above, constitutes a separate violation of Sections 201, 202, and 401 of the Clean Streams Law, 35 P.S. §§ 691.201, 691.202, and 691.401; a separate nuisance under Sections 3, 202 and 401 of the Clean Streams Law, 35 P.S. §§ 691.3, 691.202, and 691.401; and a separate instance of unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611.

I. The SSOs will continue until the Sewer System is modified to provide adequate hydraulic capacity and/or flows are reduced to within an allowable hydraulic capacity.

J. UYTA has completed significant inflow and infiltration ("I&I") removal work under a Corrective Action Plan, including, a physical survey and cleaning of the Sewer System, smoke and dye testing and subsequent removal of identified illegal stormwater connections, and digital mapping of the Sewer System.

K. The I&I work conducted by UYTA has not led to the elimination of SSOs in its Sewer System and has not sufficiently reduced flows discharged to the JRA sanitary sewer system to eliminate downstream SSOs and hydraulic overloading to the JRA sanitary sewer system and Dornick Point STP.

L. UYTA has started planning and preparing an SSO Abatement Plan to relieve its own hydraulic overload conditions and eliminate SSOs from the Sewer System, and to reduce flows to the JRA sanitary sewer system and Dornick Point STP. As a result of that planning, UYTA has decided to repair or replace its Sewer System and decided to require its customers to repair or replace all private sewer laterals that fail televised testing or pressure testing.

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 UYTA as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant Sections 5, 203, 316, 402, and 610 of the

Clean Streams Law, 35 P.S. §§ 691.5, 691.203, 691.316, 691.402, and 691.610, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. UYTA agrees that the findings in Paragraphs A through L are true and correct and, in any matter or proceeding involving UYTA and the Department, UYTA 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.

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**CORRECTIVE ACTIONS**

3. **SSO Identification.**

a. Beginning upon execution of this Consent Order and Agreement, UYTA shall identify every SSO location in the Sewer System, inspect each SSO location at least monthly and following rain events for overflow activity, and submit a report of those inspection results to the Department with each Semiannual Progress Report submitted under Paragraph 10 of this Consent Order and Agreement.

b. UYTA shall equip each SSO location that is not permanently sealed, with a device or other means that will indicate whether the SSO location overflowed since the previous inspection.

c. UYTA shall report to the Department the occurrence of each SSO orally within 24 hours and in writing within five days.

4. **UYTA SSO Abatement Plan.**

a. On or before July 30, 2015, UYTA shall submit to the Department for review and approval a plan and schedule to eliminate the SSOs in the Sewer System and to reduce its flow contribution to the JRA sanitary sewer system and the Dornick Point STP consistent with the flow reduction requirement of Paragraph 5 of this Consent Order and Agreement ("UYTA SSO Abatement Plan"). As part of the UYTA SSO Abatement Plan, UYTA shall coordinate planning and construction activities with JRA and with those Communities tributary to the UYTA Sewer System.

b. Upon the Department's written approval of the UYTA SSO Abatement Plan, UYTA shall implement the SSO Abatement Plan.

c. The UYTA SSO Abatement Plan shall be designed (i) to replace or repair all significant structural defects within the Sewer System, (ii) to remove any remaining illegal connections of stormwater to the Sewer System, (iii) to require

customers to repair and replace all leaking private laterals, and (iv) to eliminate SSOs within the Sewer System. The UYTA SSO Abatement Plan shall identify which portions of the Sewer System will be replaced, will be repaired, or will require no action.

d. The UYTA SSO Abatement Plan shall include a schedule with the following milestones:

i. On or before July 31, 2017, UYTA shall submit all necessary permit applications for new or modified sewerage facilities consistent with the UYTA SSO Abatement Plan.

ii. On or before June 30, 2021, for all areas of the Sewer System that will not be replaced by the UYTA SSO Abatement Plan, UYTA shall identify and remove all illegal connections of stormwater to the Sewer System. For areas of the Sewer System that are to be replaced and the existing sanitary sewer system will be left in place as a storm sewer system, stormwater connections will not need to be removed.

iii. On or before June 30, 2021, UYTA shall repair or replace all significant structural defects within the Sewer System.

iv. On or before June 30, 2021, UYTA shall complete construction of the new or modified sewerage facilities as described in the approved UYTA SSO Abatement Plan, and shall begin operating those facilities.

v. On or before June 30, 2021, UYTA shall have required televising or pressure testing of all private sewer laterals and the remediation, repair, and/or replacement of any private sewer laterals which failed to pass the televising or pressure testing. If televising is to be used for lateral testing, prior to allowing televising of laterals in place of pressure testing, UYTA shall submit to the Department for review and approval, a standard, which shall include as an element of the standard, but not be limited to, a third party review process, by which the testing of private sewer laterals via televising shall occur ("Private Sewer Lateral Televising Standard"). UYTA shall not implement the Private Sewer Lateral Televising Standard until it has been reviewed and approved by the Department.

vi. On or before June 30, 2021, UYTA shall eliminate all SSOs from the Sewer System and shall permanently block all SSO structures.

5. **Flow Reduction.** UYTA shall reduce its flows to the JRA sanitary sewer system to a level of 625 Gallons per Day/Equivalent Dwelling Unit ("GPD/EDU") on a peak hourly basis. If on or before December 31, 2021, UYTA fails to meet the 625 GPD/EDU benchmark, then on or before March 1, 2022, UYTA shall submit to the Department for review and approval a plan to achieve compliance with the 625 GPD/EDU benchmark ("Flow Reduction Plan"). Within thirty (30) days of receipt of

comments from the Department, UYTA shall revise the Flow Reduction Plan to address completely and include all written comments provided by the Department. Upon approval of the Flow Reduction Plan, it shall be incorporated into this Consent Order and Agreement as an obligation of this Consent Order and Agreement for all purposes.

6. **Lateral Rules and Regulations.** In addition to complying with Paragraphs 4 and 5, above, within 90 days of the execution date of this Consent Order and Agreement, UYTA shall adopt and diligently enforce rules and regulations requiring pressure testing or televising of private sewer laterals to the Sewer System upon the sale or transfer of any interest in real property within the municipality.

7. **Cooperation.** UYTA shall cooperate with JRA and the Communities in regards to flow monitoring and all other activities to eliminate SSOs, achieve the requirements of Paragraph 5 of this Consent Order and Agreement, and to bring the Dornick Point STP into compliance with the Clean Streams Law.

8. **Incorporation of Approved Plans and Schedules.** All plans and schedules required by this Consent Order and Agreement and approved by the Department are incorporated herein as obligations of this Consent Order and Agreement. UYTA shall comply with all approved plans in accordance with their approved schedules

9. **Additional Information.** If the Department requires additional information to review any submission required by this Consent Order and Agreement, UYTA shall provide the requested information within the time set forth in the Department's notice, which time shall be reasonable.

10. **Progress Reports.** UYTA shall submit written semiannual progress reports ("Semiannual Progress Report") for the periods from January to June and from July to December to the address set forth in Paragraph 16 detailing its activities to comply with the obligations in this Consent Order and Agreement. Each Semiannual Progress Report shall be submitted within fifteen days after the end of the six month period, and shall begin with the July to December, 2014 period. The Semiannual Progress Reports shall include, but not be limited to:

a. A description of the actions, including sampling and monitoring, that have been taken toward achieving compliance with this Consent Order and Agreement. This shall include an updated data table reflecting the work accomplished to date, until the work required by this Consent Order and Agreement is completed. The report shall also include the monthly SSO inspection and activity report required by Paragraph 3, above.

b. A description of all activities scheduled for the next quarter.

c. A description of any problems or delays encountered or anticipated regarding performance of the activities required by this Consent Order and Agreement.

11. **Stipulated Civil Penalties.**

a. In the event UYTA fails to comply in a timely manner with the terms or conditions of this Consent Order and Agreement, UYTA shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty of \$500 per day for each violation.

b. From the date of execution of this Consent Order and Agreement through December 31, 2021, UYTA shall pay a stipulated penalty of \$1,000 for each month in which one or more SSOs occur.

c. From January 1, 2022 through the termination of this Consent Order and Agreement, UYTA shall pay \$10,000 per month for each month in which an SSO occurs within its Sewer System.

d. Stipulated civil penalty payments shall be payable monthly on or before the 30th day of each succeeding month in which a violation or violations of this Consent Order and Agreement occur or an SSO occurs. The payment shall be made by corporate check or the like made payable to the "Commonwealth of Pennsylvania Clean Water Fund", and sent to the individual at the address set forth in Paragraph 16 (Correspondence with Department), below.

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

f. Stipulated penalties shall be due automatically and without notice.

12. **Additional Remedies.**

a. In the event UYTA 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 11 (Stipulated 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 penalty, however, shall preclude any further assessment of civil penalties for the violations for which the stipulated civil penalty is paid.

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

14. **Liability of Operator.** UYTA 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. UYTA also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

15. **Transfer of Site.**

a. Except as provided in Paragraph 15.c, below, 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 Sewer System or any part thereof.

b. If UYTA intends to transfer any legal or equitable interest in the Sewer System which is affected by this Consent Order and Agreement, UYTA 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 UYTA's duties and obligations under this Consent Order and Agreement upon transfer of the Sewer System. UYTA waives any right that it may have to challenge the Department's decision in this regard.

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

Compliance Specialist  
Clean Water Program  
Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745  
Phone: 412-442-4000 Fax: 412-442-5885

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

Upper Yoder Township Authority Chairman  
110 Sunray Drive, Suite 1  
Johnstown, PA 15905  
Telephone: 814-255-5243  
Fax: 814-255-1805



UYTA 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.

18. **Force Majeure.**

a. In the event that UYTA 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 UYTA's control and which UYTA, by the exercise of all reasonable diligence, is unable to prevent, then UYTA 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 UYTA's control. UYTA'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. UYTA shall only be entitled to the benefits of this paragraph if it 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 UYTA 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. UYTA'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 UYTA and other information available to the Department. In any subsequent litigation, the UYTA 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.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

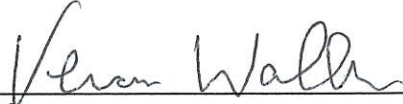
24. **Decisions under Consent Order.** Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that civil penalties or stipulated penalties are due under this Consent Order and Agreement, is intended to be neither a final action under 25 Pa. Code §1021.2, nor an Adjudication under 2 Pa. C.S. §101. Any objection which UYTA may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

25. **Termination of Obligations.** Except for UYTA's continuing obligations to pay all fees and penalties which have accrued under this Consent Order and Agreement prior to December 31, 2026, this Consent Order and Agreement shall terminate on December 31, 2026.

26. **Resolution.** Attached hereto as Exhibit A is a resolution of UYTA 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 UYTA 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 UYTA; that UYTA consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that UYTA hereby knowingly waives its rights 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 UYTA's attorney certifies only that the agreement has been signed after consulting with counsel.

**FOR UPPER YODER TOWNSHIP  
AUTHORITY:**

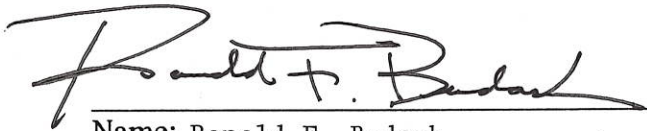


Name: Vernon Walker  
Title: Chairman

**FOR THE COMMONWEALTH OF  
PENNSYLVANIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:**



Christopher J. Kriley, P.E.  
Program Manager  
Clean Water Program  
Southwest Region



Name: Ronald F. Budash  
Title: Secretary



Bruce M. Herschlag  
Assistant Regional Counsel



Attorney for UYTA


**EXHIBIT A  
RESOLUTION**

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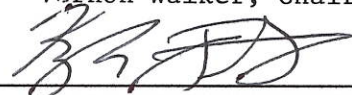
**RESOLUTION**

Be it resolved that we , the Board Members of Upper Yoder Township Authority, after negotiating all outstanding matters relative to the Authority's Sanitary Sewer Overflow (SSO) Abatement Plan and with the intent of avoiding litigation, do hereby authorize the officers of Upper Yoder Township Authority to execute that certain Consent Order Agreement with the Commonwealth of Pennsylvania Department of Environmental Protection.

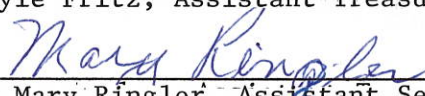
Adopted by majority vote of Members present at lawful session this 20<sup>th</sup> day of October 2014.

  
\_\_\_\_\_.

Vernon Walker, Chairman

  
\_\_\_\_\_.

Kyle Fritz, Assistant Treasurer

  
\_\_\_\_\_.

Mary Ringler, Assistant Secretary

\_\_\_\_\_.

\_\_\_\_\_.