

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

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In The Matter of:	:	
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City of Allentown,	:	
	:	
Borough of Alburtis,	:	Proceeding Under Sections 309(a) and
	:	308 of the Clean Water Act, 33 U.S.C. § 1319(a)
Borough of Emmaus,	:	and §1308
	:	
Borough of Macungie,	:	Docket No.: CWA-03-2009-0313DN
	:	
Coplay-Whitehall Sewer Authority,	:	
	:	FINDINGS OF VIOLATION,
Hanover Township,	:	ORDER FOR COMPLIANCE,
	:	AND
Lehigh County Authority,	:	REQUEST FOR INFORMATION
	:	
Lower Macungie Township,	:	
	:	
Lowhill Township,	:	
	:	
Salisbury Township,	:	
	:	
South Whitehall Township,	:	
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Upper Macungie Township,	:	
	:	
Upper Milford Township,	:	
	:	
Weisenberg Township,	:	
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Respondents.	:	

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## I. STATUTORY AUTHORITY

1. The following Findings of Violation, Order for Compliance (Order), and Request for Information is issued pursuant to the authority vested in the United States Environmental Protection Agency (EPA) under Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §1318 and 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.

## II. FINDINGS

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the United States except in compliance with a permit issued pursuant to 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, or other specific authorization.

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

4. Section 502(12) of the Act, 33 U.S.C. § 1362(12) 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.

5. 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..."

6. Each of the Respondents is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

7. Sanitary sewer overflows (SSOs) are discharges of untreated sewage from a separate sanitary sewage collection system prior to the headworks of a sewage treatment plant. These separate sanitary sewer collection systems are designed to collect and convey sewage from households and businesses and wastewater from industries to sewage treatment plants for treatment in accordance with the CWA requirements prior to discharge to waters of the United States.

8. Respondent City of Allentown (Allentown) owns and operates a sanitary sewage collection system (Allentown System) which collects and conveys sanitary wastewater and includes a wastewater treatment plant (Allentown WWTP) located in Lehigh County, Pennsylvania. The Allentown System is a separate sewer system, in that it is designed to convey only sanitary and industrial wastewaters; the sanitary wastewater is not combined with storm water. Allentown's 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 Allentown WWTP.

9. On March 20, 2003 pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Pennsylvania Department of Environmental Protection (PADEP) reissued NPDES Permit No. PA0026000 (Permit) to Respondent Allentown for the discharge of pollutants to the Lehigh River, a navigable water of the United States. The Permit expired, but has been administratively extended and therefore remains in force.

10. Respondent Lehigh County Authority (LCA) owns and operates a sanitary sewage collection system (LCA System) and a WWTP located in Lehigh County, Pennsylvania (LCA WWTP). The LCA System collects and conveys sanitary and industrial wastewater, including sewage from residences and businesses located in Lehigh County, Pennsylvania. The LCA 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 Allentown WWTP.

11. Respondents Borough of Alburdis, Borough of Macungie, Lowhill Township, Upper Macungie Township, Upper Milford Township, and Weisenberg Township each own and/or operate a sanitary sewage collection system. Sewage collected is conveyed to the sewage collection system operated by LCA and thereafter conveyed for treatment at the Allentown WWTP.

12. Respondents Borough of Emmaus, Lower Macungie Township, Salisbury Township, and South Whitehall Township each own and/or operate a sewage collection system. Sewage collected in these systems is either conveyed to the sewage collection system operated by LCA and thereafter conveyed for treatment at the Allentown WWTP, or conveyed directly to the Allentown WWTP.

13. Respondent Coplay-Whitehall Sewer Authority owns and/or operates a sewage collection system. Sewage collected is conveyed directly to the Allentown WWTP.

14. Respondent Hanover Township owns and/or operates a sewage collection system. Sewage collected is conveyed directly to the Allentown WWTP.

15. The Allentown WWTP receives flow from all sewage collection systems owned or operated by Respondents (collectively, the System).

16. Each Respondent routes wastewater through its collection system to the Allentown System and to the Allentown WWTP for treatment and discharge under the Permit, therefore each Respondent contributes "pollutants" to a "discharge" from a "point source" as those terms are defined under Section 502 of the Act, 33 U.S.C. §1362.

17. Related to various wet weather events between July 21, 2003 and the present, the System has discharged and will discharge untreated wastewater from various discharge points located prior to the headworks of the Allentown WWTP, including, but not limited to, Outfall 003 of the Allentown system, the Little Lehigh Relief Interceptor, as well as others located throughout the System. These SSOs discharge into the Lehigh River, the Little Lehigh River, Cedar Creek and Jordan Creek.

18. The discharges referenced in paragraph 17 above, constitute unauthorized discharges of pollutants into waters of the United States, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

19. By Order dated September 28, 2007, In the matter of City of Allentown, Docket No. CWA-03-2007-0032DN, EPA directed Allentown to take action pursuant to Sections 308 and 309 of the CWA. This Order is in addition to and does not supersede that Order, except that it corrects the reference to Outfall 003 of the Allentown System from a "bypass" to an SSO.

### III. ORDER FOR COMPLIANCE and REQUEST FOR INFORMATION

Therefore, the Respondents are hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to conduct the following activities and pursuant to Section 308 of the CWA, 33 U.S.C. c 1318, to provide the following information.

20. Respondents shall eliminate the discharges from the SSOs in the System no later than December 31, 2014.

21. Respondents shall cooperate as necessary in order to comply with the requirements of this Order. If, in working cooperatively to comply with this Order, the Respondents determine that revisions to their existing service agreements is necessary, Respondents shall so advise EPA no later than December 31, 2010.

22. By December 31, 2009, and semi-annually afterwards, Respondents shall, either individually or collectively, prepare and submit a Progress Report to EPA that provides the following information:

a. Progress Toward Eliminating Inflow

Identify and describe the universe of storm sewer connections to the System, including estimated numbers of roof leaders, piped streams, and French drains not yet addressed. Provide a tabular summary of known connections indicating the location, type of connection, and alternatives for routing stormwater after disconnection. Include in the tabulation the dates and outcome of inspections conducted and enforcement actions taken during the reporting period. Include a schedule with interim milestones to address storm sewer connections systemwide prior

to the deadline for SSO elimination in this Order. Identify areas where storm sewers will be established or expanded to convey stormwater eliminated from the System.

b. Progress Toward Eliminating Infiltration

Provide a description of activities undertaken during the reporting period to inspect and/or correct deficiencies within the System. Include maps indicating which portions of the system have been inspected, how identified defects have been rated (e.g., using the National Association of Sewer Service Companies (NASSCO) or other widely accepted rating system), and where defects have been corrected. Provide an inventory of potentially defective laterals that are connected to the System. Provide a tabular summary indicating the date, location, and outcome of lateral inspections conducted and enforcement actions taken during the reporting period. Include a schedule with interim milestones for addressing infiltration system-wide prior to the deadline for SSO elimination in this Order.

c. Progress Toward System Characterization

Provide results of all flow monitoring conducted during the reporting period; including in each instance the date, location, purpose and calculated inflow and infiltration (I/I) rate. Update collection system maps to reflect any and all changes to the system and/or system information discovered during the reporting period and submit updated maps.

d. Progress Toward Cooperative Management of Flows

Provide all correspondence and documentation of collaboration between and/or among Respondents regarding measures Respondents have determined necessary, including, if appropriate, revisions to Service Agreements, for managing flows in the System so as to ensure proper operation and maintenance and prevent SSOs. If Respondents determine that revisions to existing Service Agreements, to provide for cooperative management of flows are appropriate, Respondents may cease reporting on progress toward cooperative management of flows upon finalizing revised Service Agreements. Otherwise, Respondents shall continue to report on progress toward cooperative management of flows until December 31, 2014. If Service Agreements are revised as discussed herein, provide a copy of each such revised service agreement to EPA within 30 days of its revision.

e. Adequate Funding of Operation and Maintenance Activities

For the reporting period, provide the revenue generated through sewer fees, revenue generated from other sources and allocated for operation and maintenance of the sewer system, and the total revenue allocated to sewer system operation and maintenance. For sewer fee revenue, fully describe the fee structure. Provide an estimate of costs expended for compliance with the Order during the reporting period and funding options for future rehabilitation, including an analysis of potential regionalization of the System, to achieve full compliance with the Order.

23. Within 30 days of the effective date of this Order, Respondents shall submit to EPA a letter of intent to comply with this Order.
24. Respondent shall submit each semiannual Progress Report within 30 calendar days after the end of each six month reporting period.
25. All submissions required by this Order shall be sent to EPA as follows:

Allison M. Graham  
Environmental Engineer  
NPDES Enforcement Branch (3WP42)  
United States Environmental Protection Agency Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

26. All submissions required by this Order shall be signed by either a principal executive officer or a ranking elected official and shall read as follows:

"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### IV. GENERAL PROVISIONS

27. The Respondents may agree among themselves, as a matter of efficiency that one or more of Respondents may jointly produce and submit any of the reports, plans, maps or other submissions this Order requires them to individually produce. Such agreement(s) however, does not waive the individual Respondent's responsibility to meet the requirements of this Order and the CWA.
28. Violation of the terms of this Order may result in further EPA enforcement action for violation of the Order and for the underlying violations including, but not limited to, imposition of administrative penalties, 33 U.S.C. § 1319(g), and/or initiation of judicial proceedings that allow for civil penalties of up to \$37,500 per day for each violation, 33 U.S.C. § 1319(b) and (d) and 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).
29. Any failure to respond to the information request as directed is punishable under the civil and criminal provisions of Section 309 of the CWA, which provide for the assessment of penalties, injunctive relief and imprisonment. Any Respondent may, if desired, assert a business

confidentiality claim covering all or part of the information requested herein in the manner described in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in Subpart B, 40 C.F.R. Part 2. If no claim of confidentiality accompanies the information requested herein when it is received by EPA, it may be made available to the public by EPA without further notice. This inquiry is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. §§ 3501 *et seq.*

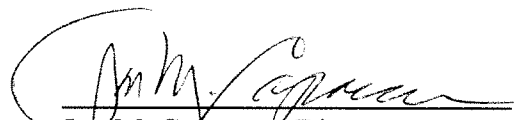
30. Issuance of this Order shall not be deemed an election by the EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. The EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.

31. Any Respondent's compliance with the terms of this Order shall not be deemed to constitute compliance with the Clean Water Act or any other Federal, State or local law or regulation. Nor does this Order constitute a waiver or modification of the terms or conditions of any issued permit.

V. EFFECTIVE DATE

32. The effective date of this Order shall be the date it is received by the Respondent.

Date: SEP 28 2009

  
Jon M. Capacasa, Director  
Water Protection Division