

MUNICIPALITY OF MONROEVILLE

RESOLUTION NO. 02-102

A RESOLUTION OF THE MUNICIPALITY OF MONROEVILLE, ALLEGHENY COUNTY, PENNSYLVANIA, A HOME RULE CHARTER COMMUNITY, AUTHORIZING SETTLEMENT OF AN ENFORCEMENT ACTION BY THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION BY ENTERING INTO A CONSENT ORDER AND AGREEMENT AND AUTHORIZING THE MANAGER OF MONROEVILLE TO EXECUTE THE AGREEMENT AND IMPLEMENT ITS TERMS.

WHEREAS, the Municipality of Monroeville pursuant to Emergency Permit No. EPO298205, issued by the Pa. Department of Environmental Protection undertook certain remedial work in and around Dirty Camp Run in July 1998 to protect it's residents and the residents of the Borough of Pitcairn from potential flooding, and;

WHEREAS, the Dirty Camp Run clean up project became an enforcement action by the Department of Environmental Protection against the Municipality of Monroeville, and;

WHEREAS, the Municipality of Monroeville is desirous of ending the enforcement action by settlement with the Department of Environmental Protection.

NOW THEREFORE BE IT THEREFORE RESOLVED as follows:

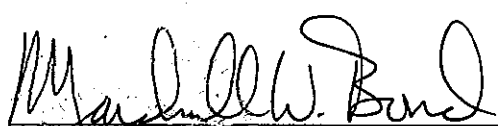
1. That the MUNICIPALITY OF MONROEVILLE approves the Consent Order and Agreement, which is attached hereto, incorporated herein, that provides for settlement of the enforcement action by payment of a civil

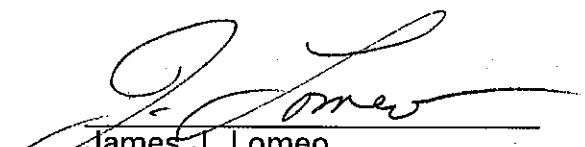
penalty in the amount of \$7,500.00 for the benefit of the Pennsylvania Dams and Encroachments Fund and funding a community environmental project in the amount of \$22,500.00 for the benefit for the Borough of Pitcairn as part of the Intergovernmental Cooperation and General Release of Claims Agreement entered into between Pitcairn and Monroeville.

- 2. The Manager of Monroeville is hereby authorized to do all necessary acts to execute and comply with the Consent Order and Agreement which settles this matter.

Accepted and approved this 10th day of December, 2002.

ATTEST:


Marshall Bond, Municipal Manager


James J. Lomeo
Mayor

ENTERED INTO LEGAL BOOK: December 20, 2002

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Municipality of Monroeville : Community Environmental Project
2700 Monroeville Road :
Monroeville, PA 15146 :

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this __ day of _____, 200_,
by and between the Commonwealth of Pennsylvania, Department of Environmental
Protection (hereinafter "Department"), and the Municipality of Monroeville (hereinafter
"Monroeville").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and
enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S.
§§ 691.1-691.1001 ("Clean Streams Law"); the Dam Safety and Encroachments Act, Act
of November 26, 1978, P.L. 1375, No. 325, *as amended*, 32 P.S. §§ 693.1-693.27
("Encroachments Act"); Section 1917-A of the Administrative Code of 1929, Act of April
9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"); and the rules
and regulations ("rules and regulations") promulgated thereunder.

ORIGINAL

B. Monroeville is a Home Rule Community that maintains a business address of 2700 Monroeville Road, Monroeville, PA 15146.

C. On or about July 2, 1998, Monroeville conducted a "clean-up" of debris from Dirty Camp Run, a water of the Commonwealth located in Monroeville, Allegheny County, Pennsylvania (the "Site") after a flood that occurred on or about July 1, 1998.

D. Under the authority of Sections 6 and 9 of the Encroachments Act, 35 P.S. §§ 693.6 and 693.9 and Section 105.232 of the rules and regulations, 25 Pa. Code § 105.232, the Department issued Emergency Permit Number EP 0298205 ("Permit"), attached as Appendix A and incorporated herein, on July 2, 1998 authorizing Monroeville to remove rock debris from Dirty Camp Run, a tributary of Turtle Creek, for approximately 5,700 feet of stream. The Department understood that Monroeville sought a Permit to address flooding in the Borough of Pitcairn, an adjacent community, which has occurred on at least two occasions in prior years. In the Permit application, Monroeville indicated that work activity would cause "little or no siltation downstream of the work area."

E. The Permit contained eight (8) Standard Permit Conditions and two (2) Special Conditions. Included in the requirements was a provision to implement an Erosion and Sedimentation Control Plan, in accordance with the requirements of 25 Pa. Code Chapter 102, during and after construction. In addition, the Permit required

Monroeville to accomplish all work from the stream bank. In cases where this was not possible, Monroeville was to minimize the use of equipment in the stream channel.

F. Section 401 of the Clean Streams Law, 35 P.S. § 691.401, forbids any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined.

G. Section 402 of the Clean Streams Law, 35 P.S. § 691.402, provides that whenever any activity has the potential to cause pollution the Department may require a permit. Conducting such activity contrary to the terms and conditions of the permit or the rules and regulations is unlawful and constitutes a nuisance.

H. Section 1 of the Clean Streams Law, 35 P.S. § 691.1, defines "pollution" as "... including ... contamination by alteration of the physical, chemical or biological properties of such waters ... or the discharge of any liquid ... solid or other substance into such waters."

I. On July 16, 1998, the Department conducted an inspection at the Site. The Department official observed tracks created by heavy machinery in and out of Dirty Camp Run; a bulldozer was parked adjacent to the Site. In addition, the Department official observed sediment-laden discharges to the unnamed tributary to Dirty Camp Run, a water of the Commonwealth, resulting in the water's muddy dark brown color.

J. The sediment-laden discharges caused as a result of Monroeville's earthmoving activities on July 2, 1998, constitute discharges of a substance resulting in pollution of the waters of the Commonwealth in violation of Section 401 of the Clean Streams Law, 35 P.S. § 691.401; a potential pollution in violation of Section 402 of the Clean Streams Law, 35 P.S. § 691.402; and constitutes statutory nuisances.

K. The violations averred in Paragraphs I and J, above, constitute knowing, intentional, willful, and continuing violations by Monroeville of Sections 401 and 402 of the Clean Streams Law, 35 P.S. §§ 691.401 and 691.402; constitute unlawful conduct according to Section 611 of the Clean Streams Law, 35 P.S. § 691.611.

L. Section 102.4 of the rules and regulations, 25 Pa. Code § 102.4, which regulations were in effect at all times herein, requires that earthmoving activities be conducted in such a way as to prevent accelerated erosion and its resulting sedimentation, and that a landowner, person or municipality shall develop, implement and maintain erosion and sedimentation control measures which effectively minimize accelerated erosion and sedimentation. The erosion and sedimentation measures shall be set forth in a plan as set forth in Section 102.5 and be available at all times at the site of the activity.

M. Section 102.11 of the rules and regulations, 25 Pa. Code § 102.11, provides for the incorporation of sediment control measures and facilities into earthmoving activities to prevent accelerated erosion and sedimentation.

N. During the Department's inspection on July 16, 1998, no control measures were evident. In fact, the presence of the bulldozer adjacent to the Site and machinery tracks in the stream bed reveal Monroeville's failure to minimize the areal extent of disturbed land. The Department observed no evidence of stabilization as surface water was not diverted away from the project area, nor was there any solids separation, as evidenced by the sediments released into the water resulting in a muddy, dark brown color. Also, there was no evidence of runoff collection through the use of facilities to contain the water after the diversion to avoid sedimentation. The site remained in a disturbed state, with evident erosion. No facilities or controls were in place to prevent accelerated erosion and sedimentation.

O. The violations averred in Paragraph N, above, constitute knowing, intentional and willful violations of the erosion and sedimentation regulations in Chapter 102, 25 Pa. Code § 102 and constitute unlawful conduct according to Section 611 of the Clean Streams Law, 35 P.S. § 691.611.

P. On July 17, 1998, the Department issued a Compliance Order to Monroeville. The Compliance Order is attached hereto as Appendix B and incorporated herein.

Q. The Compliance Order required Monroeville, among other things, to:
Complete an interim stabilization of the Site by July 22, 1998;

Develop an erosion and sedimentation control plan that prevents accelerated erosion and sedimentation and file the plan with the Allegheny County Conservation District by July 24, 1998; and

Develop a site remediation plan which delineates all damage to the stream and stream banks and materials deposited along stream banks by August 10, 1998; and implement site remediation by August 31, 1998.

R. Between August 31, 1998 and September 16, 1998, Monroeville failed to complete site remediation as required in the July 17, 1998 Compliance Order.

S. Monroeville did not appeal or otherwise seek a supersedeas of the Compliance Order. *See* Certification of Failure to Appeal, Appendix C, attached hereto and incorporated herein.

T. The failure to comply with an Order of the Department is a violation of Sections 610 and 611 of the Clean Streams Law, 35 P.S. §§ 691.610 and 691.611.

U. On July 16, 1998, the Department conducted an inspection of the Site and observed that Monroeville had failed to implement an Erosion and Sedimentation Plan, meeting the requirements of Chapter 102, in violation of Permit Condition No. 2.

V. On July 16, 1998, Monroeville had failed to accomplish all work from the stream bank and, where not possible to do so, Monroeville failed to minimize the use of equipment in the stream channel, contrary to Permit Condition No. 4.

W. On July 16, 1998, Monroeville had failed to dispose of all excavated material beyond the limits of the floodplain, contrary to Permit Condition No. 5.

X. Failure to comply with the permit terms or conditions constitutes a nuisance and is a violation of Section 402(b) of the Clean Streams Law, 35 P.S. § 691.402(b); a violation of Section 13 of the Encroachments Act, 35 P.S. § 693.13; and constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and Section 18 of the Encroachments Act, 35 P.S. § 693.18.

Y. The violations averred in Paragraphs I, J, K, N, O, R, T, U, V, W and X, above, constitute knowing, intentional, willful and continuing violations by Monroeville of Sections 610 and 611 of the Clean Streams Law, 35 P.S. §§ 691.610 and 691.611.

Z. Pursuant to the Department's "Policy for the Acceptance of Community Environmental Projects in Conjunction with Assessment of Civil Penalty," Monroeville has submitted a written proposal entitled "Intergovernmental Cooperation and General Release of Claims" hereinafter "Project." This Project resulted from the filing of a legal action in June, 1999, against Monroeville by the Borough of Pitcairn ("Pitcairn"). Pitcairn asserted that Monroeville caused or substantially contributed to flooding in Pitcairn. The Project involves Pitcairn and Monroeville agreeing to perform maintenance on Dirty Camp Run on a joint basis, not less than twice annually, or more frequently, if the parties agree, subject to the prior approval of the Department. Both parties agree to share equally in the costs associated with obtaining necessary permits, as well as labor and maintenance. In addition, the Project requires inspections of storm water facilities in the Dirty Camp Run Watershed by engineers of each respective party. Any deficiencies

noted by the engineers shall be reported to a Joint Committee which is responsible for recommending actions to propose revisions to storm water management ordinances, inspections, enforcement and/or other matters relevant to the management of storm water runoff. Monroeville has stated that it is willing to contribute \$22,500 to Pitcairn to cover a portion of Pitcairn's expenses to be incurred in the Project and has asked the Department to accept a civil penalty in the amount of \$7,500. The Project is attached as Appendix C.

AA. The Department has determined that the Project will provide substantial safety benefits and that the contribution to the Borough of Pitcairn's financial obligation portion of the Project is not something Monroeville is otherwise legally required to do. The Department has agreed that the value of the Borough of Pitcairn's financial obligation portion of the Project is at least \$22,500 and that, in consideration of the Project, will accept a civil penalty in the amount of \$7,500.

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 Monroeville as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Clean Streams Law, 35

P.S. § 691.5; Section 20 of the Encroachments Act, 32 P.S. § 693.20; and Section 1917-A of the Administrative Code, *supra*.

2. Findings.

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

3. The Department has calculated a proposed Civil Penalty in the amount of \$30,000 for the violations described in Paragraphs I, J, K, N, O, R, T, U, V, W, X and Y.

4. Civil Penalty Settlement. In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under Section 605 of the Clean Streams Law, 35 P.S. § 691.605 and Section 21 of the Encroachments Act, 32 P.S. § 691.21, the Department hereby assesses a civil penalty of \$7,500. Monroeville shall pay the civil penalty within ten (10) days of the date of this Consent Order and Agreement. The payment shall be made by corporate check or the like made payable to Dams and Encroachments Fund and sent to Don Brown, Compliance Specialist, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

5. Community Environmental Project.

a. Within ten (10) days of the date of execution of this Consent Order and Agreement, Monroeville shall create a dedicated account for the benefit of the Borough of Pitcairn in the amount of \$22,500.00 for the Borough of Pitcairn's funding obligation under the Intergovernmental Cooperation Agreement and General Release of Claims that is attached hereto as Appendix D. This fund shall require the signatures of a representative of the Borough of Pitcairn and the Municipality of Monroeville to be drawn upon. The funds shall only be used on behalf of the Borough of Pitcairn to maintain Dirty Camp Run and/or improve storm water management efforts in Pitcairn.

b. Within five (5) days of creating the dedicated fund on behalf of the Borough of Pitcairn, Monroeville shall verify in writing to the Department that the dedicated fund in the agreed amount has been created and a copy of this Agreement including Exhibit D were sent to and received by the Borough of Pitcairn.

6. With respect to the November, 2001 Intergovernmental Cooperation and General Release of Claims, Monroeville acknowledges that the Department is unlikely to issue emergency or other permits for the general dredging of Dirty Camp Run. Permits will only be issued for the removal of significant size debris which can be removed with minimal equipment operation in the stream. All debris removal shall be done in accordance with an erosion and sedimentation control plan approved by the Allegheny County Conservation District. All debris shall be removed from the floodplain.

7. Tax Deductibility. Monroeville shall not deduct the costs incurred in connection with or in any way associated with the Community Environmental Project described in Paragraph 5 for any tax purpose or otherwise obtain a favorable tax treatment for those costs. If requested to do so by the Department, Monroeville shall submit an affidavit of the corporate officer responsible for the financial affairs of Monroeville certifying that Monroeville has not deducted or otherwise obtained favorable tax treatment of any of the costs of the Community Environmental Project.

8. Publicity About the Project. Monroeville agrees that whenever it publicizes, in any way, the Project, it will state that the Project was undertaken as part of the settlement of an enforcement action with the Department.

9. Completion of Project. Within thirty (30) days of the completion of the expenditure of \$22,500 by the Borough of Pitcairn for the Project, Monroeville shall submit to the Department an affidavit of the corporate official responsible for overseeing the Project. The affidavit shall contain a certification that the Project is complete and a statement setting forth all costs incurred in completing the Project.

10. Remedies. In the event Monroeville fails to make payment of its civil penalty of \$7,500 within ten (10) days of the date of this Consent Order and Agreement, as described further in Paragraph 4 herein, Monroeville shall be subject to daily stipulated penalties of \$150.00. Such stipulated penalties shall continue and accrue until payment to the Department is tendered automatically and without notice. In the event Monroeville

fails to make any payment within five years required by Paragraph 5 of this Agreement, all remaining payments shall immediately be due and payable to the Department as a civil penalty. In the event that the Borough of Pitcairn returns unused money to Monroeville, Monroeville shall immediately pay a stipulated penalty in an amount equal to the unspent funding returned to Monroeville, in accordance with the payment method outlined in Paragraph 4, herein. Under any of these circumstances, the Department may pursue any remedy available for failure to pay a civil penalty, including the filing of this Agreement as a lien in any county in this Commonwealth.

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

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

Donald P. Brown, Compliance Specialist
Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745
412-442-4000

13. Correspondence with Monroeville. All correspondence with Monroeville concerning this Consent Order and Agreement shall be addressed to:

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Marshall Bond, Manager
Municipality of Monroeville
2700 Monroeville Road
Monroeville, PA 15146

Monroeville 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.

14. 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.

15. 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.

16. 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.

17. Resolution. Attached hereto as Appendix E is a resolution of the Municipality of Monroeville 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 Monroeville 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 Monroeville; that Monroeville consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Monroeville 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 Monroeville's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR THE MUNICIPALITY OF
MONROEVILLE:

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

Marshall W. Bond 12/11/02
 Name Date
 Title Municipal Manager

 Tim V. Dreier Date
 Manager
 Water Management

Robert C. Zurek
 Name Date
 Attorney for Monroeville

 Charney Regenstein Date
 Assistant Counsel

APPENDIX A

3200-PM-DWW0007 Rev. 2/96



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF DAMS, WATERWAYS AND WETLANDS

RECEIVED
OCT 29 1998

Coordination #
Estimated Cost \$

EMERGENCY PERMIT NO. EP 0298205

SECTION A. PERMITTEE
Municipality of Monroeville
(Name)
2700 Monroeville Boulevard
(Mailing Address)
Monroeville PA 15146-2388
(Zip Code)
()
(Home Telephone #) (412) 856-1000
(Work Telephone #)

SECTION B. SITE LOCATION DATA
Unnamed Tributary to Turtle Creek
(Stream Name)
Monroeville
(Municipality)
Allegheny
(County)
Braddock PA
(7 1/2 min. Quad Name) N: 9.0 inches W: 3.15 inches
(Limits)

SECTION C. PROJECT DATA

(DESCRIPTION OF WORK)

To remove rock debris from the channel of unnamed tributary to Turtle Creek along Pitcairn Road for an approximate length of 5700 feet starting from Wallace Dr. and ends at the Borough of Pitcairn

SECTION D. PERMIT CONDITIONS

- Contact and advise the Pennsylvania Fish and Boat Commission's Southwest Regional Office as to when the work will begin and when the work has been completed at telephone number 814-445-8974
- Contact the Allegheny County Conservation District at telephone number (412) 921-1999
- An Erosion and Sedimentation Plan, meeting the requirements of Chapter 102, must be implemented during and after construction.
- All work will be accomplished from the stream bank. In those cases where this is not possible, the use of equipment in the stream channel is to be minimized.
- All excavated material shall be disposed of beyond the limits of the floodplain.
- Secure all other approvals that may be necessary under other Federal, State or local regulations.
- This approval does not give any property rights, either in real estate or material, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest, in, to, or over any land belonging to the Commonwealth of Pennsylvania; neither does it authorize any injury to private property or invasion of private rights.
- Contact the local municipality and county to satisfy Act 14 notification requirements.
- Special Conditions as follows:
A- The applicant must contact U.S. Army Corps of Engineers to obtain a Federal Permit.
B- Waste materials must be disposed at a site approved by the Department. Do not place it in wetlands and flood plains.

This permit will expire in 30 days unless written permission extending that time is issued by the Department:

SECTION E. APPROVAL

APPROVED BY: Wade Embert DATE 7/2/98

(SIGNATURE OF PERMITTEE)

- PA Fish and Boat Commission
- U.S. Fish and Wildlife Service
- County Conservation District
- U.S. Army-Corps of Engineers
- DEP, Central Office

COMMONWEALTH'S EXHIBIT

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PERMITS-Regulatory, R-1

APPENDIX B

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Pennsylvania Department of Environmental Protection

400 Waterfront Drive
Pittsburgh, PA 15222-4745
July 17, 1998

(412) 442-4000

Southwest Regional Office

Certified Mail # P 573 255 884

Mr. Marshall Bond, Manager
Municipality of Monroeville
2700 Monroeville Blvd.
Monroeville, PA 15146-2388

RE: Compliance Order
Dirty Camp Run
File No. 800207
Municipality of Monroeville
Allegheny County

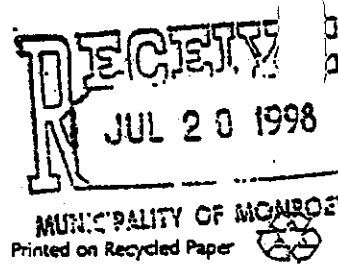
Dear Mr. Bond:

Please find enclosed a Compliance Order from the Pennsylvania Department of Environmental Protection. This Order requires the following:

1. Interim stabilization (listed in paragraphs A, page # 3) be completed by July 22, 1998.
2. An erosion and sedimentation plan be developed and submitted to the Allegheny County Conservation District by July 24, 1998(Paragraph B).
3. A site remediation plan to be submitted to the Department by August 10, 1998.
4. Implementation of the erosion control plan and site remediation plan be completed by August 31, 1998.

Subsequent to issuance of this order, an administrative/enforcement conference will be held to discuss settlement of the noted violations.

If you have any questions, please contact me at 412-442-4315.



3. In exchange for the mutual promises exchanged herein, the Borough of Pitcairn does hereby remise and forever discharge, and does for itself, its successors and assigns, release and forever discharge the Municipality of Monroeville, its agents, servants, employees, Council Members, insurers including, but not limited to, Pennsylvania Pooled Risk Insurance for Municipal Entities, and/or their attorneys from any and all liability, claims, causes of action, damages, costs, expenses or demands of any kind whatsoever in law or in equity, and specifically from any claims or joinders for sole liability, contribution, indemnity or otherwise which against the said Municipality of Monroeville, its agents, employees, servants, Council Members, insurers and/or attorneys it ever had, now has, or which it may have in the future, or which its successors or assigns hereinafter can or may have by reason of any injuries or damages sustained and the consequences thereof, claims for damages known or unknown, foreseen or unforeseen, arising or which may arise as a result of or in any way connected with the incident occurring on July 1, 1997, resulting in the lawsuit filed at No. GD99-010019 in the Court of Common Pleas of Allegheny County, Pennsylvania.

4. It is further understood and agreed that the promises exchanged hereunder are in full accord and satisfaction of a disputed claim and does not constitute an admission of liability as liability is hereby expressly denied.

5. It is further understood and agreed that this is a complete Release Agreement and that there is no written or oral understanding or agreement directly or indirectly connected with this release and settlement which is not incorporated herein.

6. In executing this Agreement, each officer covenants and agrees that he/she, by his/her signature, has the authority under law, and the approval of the appropriate governing

body to execute this Agreement, and that the signing of the same has been authorized by the proper entity.

7. It is understood and agreed that this Release also includes settlement and discontinuance, with prejudice, of the action filed at No. GD99-010019 in the Court of Common Pleas of Allegheny County, Pennsylvania. Discontinuance shall be filed, with prejudice, immediately upon execution of this Agreement.

IN WITNESS WHEREOF, the parties, by and through their representatives designated below, have set their hands and seals on the date indicated below.

ATTEST:

M. J. O'Connell
Date: 11/13/01

MUNICIPALITY OF MONROEVILLE

By: *Albert Comunale*
Title: *Mayor*
Date: 11/13/01

ATTEST:

Josephine Higgins
Date: 11/1/01

BOROUGH OF PITCAIRN

By: *Marlene Shuman*
Title: *President*
Date: 11-1-01

APPENDIX E

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MUNICIPALITY OF MONROEVILLE

RESOLUTION NO. _____

A RESOLUTION OF THE MUNICIPALITY OF MONROEVILLE, ALLEGHENY COUNTY, PENNSYLVANIA, A HOME RULE CHARTER COMMUNITY, AUTHORIZING SETTLEMENT OF AN ENFORCEMENT ACTION BY THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION BY ENTERING INTO A CONSENT ORDER AND AGREEMENT AND AUTHORIZING THE MANAGER OF MONROEVILLE TO EXECUTE THE AGREEMENT AND IMPLEMENT ITS TERMS.

WHEREAS, the Municipality of Monroeville pursuant to Emergency Permit No. EP0298205, issued by the Pa. Department of Environmental Protection undertook certain remedial work in and around Dirty Camp Run in July 1998 to protect it's residents and the residents of the Borough of Pitcairn from potential flooding, and;

WHEREAS, the Dirty Camp Run clean up project became an enforcement action by the Department of Environmental Protection against the Municipality of Monroeville, and;

WHEREAS, the Municipality of Monroeville is desirous of ending the enforcement action by settlement with the Department of Environmental Protection.

NOW THEREFORE BE IT THEREFORE RESOLVED as follows:

1. That the MUNICIPALITY OF MONROEVILLE approves the Consent Order and Agreement, which is attached hereto, incorporated herein, that provides for settlement of the enforcement action by payment of a civil

penalty in the amount of \$7,500.00 for the benefit of the Pennsylvania Dams and Encroachments Fund and funding a community environmental project in the amount of \$22,500.00 for the benefit for the Borough of Pitcairn as part of the Intergovernmental Cooperation and General Release of Claims Agreement entered into between Pitcairn and Monroeville.

- 2. The Manager of Monroeville is hereby authorized to do all necessary acts to execute and comply with the Consent Order and Agreement which settles this matter.

Accepted and approved this _____ day of _____, 2002.

ATTEST:

Marshall Bond, Municipal Manager

James J. Lomeo
Mayor

ENTERED INTO LEGAL BOOK: _____

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Municipality of Monroeville

-2-

July 17, 1998

Sincerely,

A handwritten signature in black ink, appearing to be 'Don Brown', written in a cursive style with a long horizontal line extending to the right.

Don Brown
Compliance Specialist
Soils & Waterways Section



COMPLIANCE ORDER

OPERATOR		PHONE NO.	
Municipality of Monroeville		412-856-1000	
ADDRESS 2700 Monroeville Blvd. Monroeville, PA 15146-2388		MUNICIPALITY Monroeville	
FACILITY NAME OR DESCRIPTION Stose; Dirty Camp Run Sci Debris Removal		COUNTY Allegheny	
PERMIT NO(S) EPO298205	DATE OF INSPECTION 7/16/98	TIME OF INSPECTION FROM 11:00 A.M. TO 12:00 P.M.	
NAME AND TITLE OF RECEIVING OFFICIAL Sent Certified Mail			DATE OF SERVICE 7/17/98

The Department of Environmental Protection is the agency with the authority to administer and enforce the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §691.1 et seq., and Section 1917-A of the Administrative Code, the Act of April 9, 1925, P.L. 177 as amended, 71 P.S. §510-17, and the Rules and Regulations of the Environmental Quality Board adopted thereunder.

The undersigned, authorized representative of the Department has conducted an inspection of the above site on the above date and has determined that violations listed in attachment(s) exist. This Order constitutes a separate Order for each violation listed.

Pursuant to Sections 5, 316, 402, and 610 of the Clean Streams Law (35 P.S. §§691.5, 691.316, 691.402, and 691.610) and Section 1917-A of the Administrative Code, as amended, 71 P.S. §510-17, the Department hereby ORDERS that the operator shall perform the corrective actions listed in the attachment.

Failure to comply with this order constitutes unlawful conduct under Section 611 of The Clean Streams Law (35 P.S. §691.611) and a violation under Section 610 of The Clean Streams Law (35 P.S. §691.610). Section 605 of The Clean Streams Law (35 P.S. §691.605) provides that the Department may assess a civil penalty of up to Ten Thousand Dollars (\$10,000) per day for each violation of this order.

Nothing contained in the order shall be construed to relieve or limit the obligations of the above-mentioned operator to comply with the terms and conditions of any permit existing or hereafter issued by the Department to the operator, or to limit any civil or criminal liability of the operator. Additional requirements may be imposed in the future by subsequent Department orders or other actions. Your prompt compliance with this order will be considered when assessing a civil penalty for the violation(s) which is (are) the subject of this order.

APPEAL NOTICE

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or an audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

DEPARTMENT REPRESENTATIVE	PHONE NUMBER: (412) 4306	RECEIVING OFFICIAL The undersigned representative, hereby acknowledges receipt of this order and attachment(s) hereto. This signature does not constitute an acknowledgement that any or all of the violations listed in the attachment(s) have occurred or continue to occur.	
NAME: Don Brown		SIGNATURE: <i>Confidential Mail</i>	
TITLE: Compliance Specialist		DATE: 7/17/98	
ADDRESS: 400 Waterfront Drive Pittsburgh, PA 15222-4745			
SIGNATURE: <i>[Signature]</i>	(Date)		

Operator	<u>Monroeville, Ma</u>
Facility Name	<u>Dirty Camp Ru</u>
Permit No.	<u>EP0298205</u>

COMPLIANCE ORDER Site Conditions: Descriptions and Violations

- 1. () EARTHMOVING WITHOUT AN EARTH DISTURBANCE PERMIT (EDP) OR A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT for Stormwater Discharges from Construction Activities.
 - () More than twenty-five acres disturbed or commenced earthmoving prior to obtaining an EDP.
 - () More than five acres disturbed, or commenced earthmoving prior to obtaining an NPDES permit.
 1. Description
Conducting earthmoving activities on an area exceeding the minimum permit requirements without authorization by Departmental permit.
 2. Violation
 - () Conducting an earthmoving activity without obtaining an EDP in violation of 25 Pa. Code §102.31 and Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§691.402, 691.611 (Timber Harvest Activities)
 - () Conducting an earthmoving activity without obtaining an NPDES Permit, in violation of 25 Pa. Code §92 and Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§691.402 and 691.611.

- 3. () EARTHMOVING WITHOUT AN EROSION AND SEDIMENTATION CONTROL PLAN RESULTING IN POTENTIAL FOR POLLUTION.
 1. Description
Conducting earthmoving activities without developing an erosion and sedimentation control plan. Failure to plan and implement effective erosion control measures or facilities creates a danger of sediment pollution to enter _____ water(s) of the Commonwealth.
 2. Violation
Conducting an earthmoving activity without obtaining an NPDES Permit, in violation of 25 Pa. Code §102.4, and Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§691.402 and 691.611.

- 4. (X) EARTHMOVING WITHOUT AN EROSION AND SEDIMENTATION CONTROL PLAN, CAUSING POLLUTION.
 1. Description
Conducting earthmoving activities without developing an erosion and sedimentation control plan. Failure to plan and implement effective erosion control measures or facilities resulted in sediment pollution entering Dirty Camp Ru water(s) of the Commonwealth.
 2. Violation
Conducting earthmoving activities without an erosion and sedimentation control plan and causing sediment pollution to enter Dirty Camp Ru water(s) of the Commonwealth, in violation of 25 Pa. Code §102.4, and Sections 401 and 611 of the Clean Streams Law, P.S. §§691.401 and 691.611.

- D. () FAILURE TO IMPLEMENT AN EROSION AND SEDIMENTATION CONTROL PLAN THAT PREVENTS ACCELERATED EROSION AND SEDIMENTATION, RESULTING IN POTENTIAL POLLUTION.
 1. Description
Conducting earthmoving activities without implementing an erosion and sedimentation control plan to prevent accelerated erosion and sedimentation. Failure to implement effective erosion control measures or facilities creates a danger for sediment pollution to enter, _____ water(s) of the Commonwealth.
 2. Violation
Failure to plan and implement an erosion and sedimentation control plan that prevents accelerated erosion and sedimentation, in violation of 25 Pa. Code §102.4, and Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§691.402 and 691.611.

- E. (X) FAILURE TO IMPLEMENT AN EROSION AND SEDIMENTATION CONTROL PLAN THAT PREVENTS ACCELERATED EROSION AND SEDIMENTATION, CAUSING POLLUTION.
 1. Description
Conducting earthmoving activities without implementing an erosion and sedimentation control plan to prevent accelerated erosion and sedimentation. Failure to implement effective erosion control measures or facilities resulted in sediment pollution entering Dirty Camp Ru water(s) of the Commonwealth.
 2. Violation
Failure to implement an erosion and sedimentation control plan causing sediment pollution to enter, Dirty Camp Ru water(s) of the Commonwealth, in violation of 25 Pa. Code §102.4, and Sections 401 and 611 of the Clean Streams Law, 35 P.S. §§691.401 and 691.611.

COMPLIANCE ORDER Remedial Actions

Except as required by this Order, immediately cease all earthmoving activities, until written authorization is given by the Department to resume activities.
A) Immediately begin interim stabilization at the site so that accelerated erosion and sedimentation shall be prevented by implementing the following measures:

- 1) Seed and mulch all access entrances to Dirty Camp Creek
- 2) Place silt fence or straw bales between areas of disturbance and stream until areas are stabilized.

Complete implementation of these measures and facilities by 7/22/98

B) Develop an erosion and sedimentation control plan that prevents accelerated erosion and sedimentation, considering all factors listed in 25 Pa. Code §102.5(b). By: 7/24/98, file the plan with the following offices:

Allegheny County Conservation District
Lexington Technology Park
Building #1, Suite 107
400 North Lexington
Pittsburgh, PA 15208

This plan is to address stabilization of ~~the~~ access area

Immediately begin implementing erosion control measures and facilities as detailed in the erosion and sedimentation control plan, including, but not limited to:

Complete implementation of these measures and facilities by _____

Submit a full and complete _____ permit application. By _____, submit the permit application to the following office:

C) Develop a site remediation plan which delineates all damage to the stream and stream banks & materials deposited along stream banks. This plan is to provide a means of stabilization and determination on how the work will be accomplished.

Submit remediated plan
by 8/10/98.
Implement site remediation
by 8/31/98

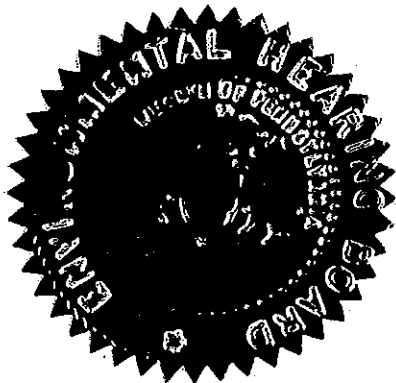
APPENDIX C

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

Rachel Carson State Office Building
400 Market Street / P.O. Box 8457
Harrisburg, PA 17105-8457
717-787-3483 - Telephone
717-783-4738 - Facsimile

CERTIFICATION OF OFFICIAL RECORDS

I, William T. Phillipy, IV, Secretary to the Environmental Hearing Board, by virtue of the powers and duties vested in that office, do hereby certify in accordance with § 6103 of the Judicial Code, 42 Pa. C.S. § 6103, that I am the custodian of records for the Environmental Hearing Board and further certify, after checking the docket records of the Environmental Hearing Board, that the Municipality of Monroeville did not appeal the Compliance order of July 17, 1998.



In testimony whereof I have set my hand and caused the seal of the Environmental Hearing Board to be affixed hereto.

William T. Phillipy, IV
Secretary to the Board

Dated: July 9, 2001



APPENDIX D

APPENDIX D

**INTERGOVERNMENTAL COOPERATION AGREEMENT AND
GENERAL RELEASE OF CLAIMS**

WHEREAS, the Borough of Pitcairn commenced an action by Writ of Summons in the Court of Common Pleas of Allegheny County against the Municipality of Monroeville on June 29, 1999;

WHEREAS, Pitcairn asserts in the Complaint that the alleged negligence of the Municipality of Monroeville caused or substantially contributed to flooding in the Borough of Pitcairn which occurred on or about July 1, 1997;

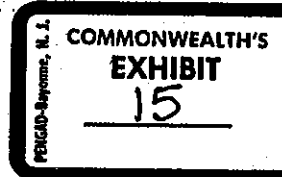
WHEREAS, the Municipality of Monroeville has denied liability and has filed an Answer and New Matter setting forth certain affirmative defenses;

WHEREAS, the parties wish to resolve all differences between them in order to avoid the time and expense of further legal proceedings; and

WHEREAS, the Borough of Pitcairn and the Municipality of Monroeville, by and through their respective legal counsel, have agreed to resolve the dispute upon the following terms and conditions.

NOW, THEREFORE, the Borough of Pitcairn and the Municipality of Monroeville in consideration of the mutual promises contained herein, and intending to be legally bound, hereby agree as follows:

1. The Municipality of Monroeville and the Borough of Pitcairn understand and agree that any and all maintenance efforts in Dirty Camp Run envisioned by this Agreement shall be performed in full accordance with and as may be permitted by the Pennsylvania Department of Environmental Protection. Any and all prior approvals required will be requested through the DEP on a joint basis. In recognition of this fact, the Borough of Pitcairn and the



Municipality of Monroeville agree to perform maintenance on Dirty Camp Run on a joint basis not less than twice annually, or more frequently if the parties agree, subject to the prior approval of the Pennsylvania Department of Environmental Protection. The Borough of Pitcairn and the Municipality of Monroeville agree to share equally in the costs associated with obtaining necessary permits to perform such maintenance and to share the cost of materials and labor necessary to perform the agreed upon maintenance. Either or both Municipalities may provide necessary equipment.

2. At the first duly convened meeting of each respective municipal Council following approval and execution of this Agreement and at the reorganization meeting each year thereafter, the Borough of Pitcairn shall nominate one Council Member and the Municipality of Monroeville shall nominate two Council Members to serve on a Joint Committee to review questions or concerns raised regarding storm water management runoff. Within one (1) year of the execution of this Agreement, the parties, by and through their respective engineers, shall inspect the stormwater facilities in the Dirty Camp Run Watershed. Any deficiencies noted shall be reported by the engineers to the Committee. Thereafter, this Committee shall be charged with the responsibility of recommending action to the Borough of Pitcairn Council and/or the Municipality of Monroeville Council relative to proposed revisions to storm water management ordinances, inspections, enforcement and other matters the committee deems relevant for consideration by the respective municipalities relative to the management of storm water runoff. This Committee shall have available to them the expertise of the engineers employed or retained by either or both of the Municipalities and shall meet in open meetings as required by law, and at times previously set by the Committee, for the purpose of discussing and reviewing these issues.

3. In exchange for the mutual promises exchanged herein, the Borough of Pitcairn does hereby remise and forever discharge, and does for itself, its successors and assigns; release and forever discharge the Municipality of Monroeville, its agents, servants, employees, Council Members, insurers including, but not limited to, Pennsylvania Pooled Risk Insurance for Municipal Entities, and/or their attorneys from any and all liability, claims, causes of action, damages, costs, expenses or demands of any kind whatsoever in law or in equity, and specifically from any claims or joinders for sole liability, contribution, indemnity or otherwise which against the said Municipality of Monroeville, its agents, employees, servants, Council Members, insurers and/or attorneys it ever had, now has, or which it may have in the future, or which its successors or assigns hereinafter can or may have by reason of any injuries or damages sustained and the consequences thereof, claims for damages known or unknown, foreseen or unforeseen, arising or which may arise as a result of or in any way connected with the incident occurring on July 1, 1997, resulting in the lawsuit filed at No. GD99-010019 in the Court of Common Pleas of Allegheny County, Pennsylvania.

4. It is further understood and agreed that the promises exchanged hereunder are in full accord and satisfaction of a disputed claim and does not constitute an admission of liability as liability is hereby expressly denied.

5. It is further understood and agreed that this is a complete Release Agreement and that there is no written or oral understanding or agreement directly or indirectly connected with this release and settlement which is not incorporated herein.

6. In executing this Agreement, each officer covenants and agrees that he/she, by his/her signature, has the authority under law, and the approval of the appropriate governing