

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

CLEAN WATER ACTION,)	
)	
Appellant,)	
)	
v.)	
)	
COMMONWEALTH OF PENNSYLVANIA,)	EHB Docket No. 2009-134-R
DEPARTMENT OF ENVIRONMENTAL)	
PROTECTION, and SHALLENBERGER)	
CONSTRUCTION, INC., Permittee,)	
)	
Appellees.)	
)	

**NOTICE OF WITHDRAWAL, WITH PREJUDICE,
OF AMENDED NOTICE OF APPEAL**

Pursuant to 25 Pa. Code § 1021.141(a)(1), appellant Clean Water Action (“CWA”) hereby withdraws, with prejudice, its Amended Notice of Appeal (“Amended Appeal”), filed with the Environmental Hearing Board (“EHB”) on November 2, 2009. Because voluntary withdrawals “will be without prejudice unless otherwise ordered by the Board,” EHB Practice and Procedure Manual § XIV(C), CWA respectfully requests that the EHB order withdrawal of the Amended Appeal, with prejudice, based on the following facts:

Background

1. In 2008, a 70-mile stretch of the Monongahela River was contaminated with total dissolved solids (“TDS”) at levels exceeding water quality standards. Amended Appeal ¶ 52. The Pennsylvania Department of Environmental Protection (“DEP”) acknowledged that much of the problem appeared to be caused by the discharge from sewage treatment plants of high volumes of wastewater from deep gas drilling. *See id.*

2. The Monongahela River is the primary source of drinking water for approximately 350,000 people in southwestern Pennsylvania. *See id.* ¶ 51.

3. Notwithstanding the contamination, on August 28, 2009, DEP issued to Shallenberger Construction, Inc. (“Shallenberger”) a Water Quality Management Part II Permit (“WQM Permit”) for construction of an “industrial wastewater treatment facility for gas well drilling and production wastes,” known as the Ronco Water Treatment Facility (“Ronco Facility”). *See id.* ¶ 70. The Ronco Facility proposed to discharge gas wastewaters with high TDS levels into the already polluted Monongahela River under an unlawful National Pollutant Elimination Discharge Permit (“NPDES”) permit issued by DEP in September 2008 (the “2008 NPDES Permit”). *See id.* ¶ 60. The 2008 NPDES Permit required only that the facility monitor for TDS, without imposing any limits on TDS discharge levels, and it contained neither limits nor monitoring requirements for radionuclides, sulfates, chlorides, heavy metals other than iron and barium, or for any of the “BTEX” compounds (benzene, toluene, ethylbenzene, and xylene). *Id.* ¶ 62. The permit also failed to include many of the mandatory technology-based effluent limitations set forth in 40 C.F.R. part 437 (“Part 437 Limits”). *Id.* ¶ 61.

4. Also on August 28, 2009, DEP executed a Consent Order and Agreement (the “2009 CO&A”), authorizing Shallenberger to operate the Ronco Facility under the unlawful 2008 NPDES Permit until DEP amended that permit to comply with the law. Annexed to the 2009 CO&A was a draft NPDES permit amendment (the “2009 Draft Permit Amendment”), which included Part 437 Limits and limits for TDS and sulfates, but DEP promised not to issue the amended permit for at least 180 days. *Id.* ¶ 73. Moreover, the 2009 CO&A recognized that the Ronco Facility would need additional treatment equipment to meet the TDS limits, *id.* ¶ 74,

but nevertheless allowed the plant to operate without it for three years after DEP issued the final permit amendment, *id.* ¶ 75.

The Amended Appeal

5. On October 13, 2009, CWA filed a Notice of Appeal, seeking EHB review of the WQM Permit and the 2009 CO&A.

6. On November 2, 2009, CWA filed its Amended Appeal, which clarified the numerous deficiencies in the 2009 CO&A that were the subject of its appeal. Specifically, the Amended Appeal noted that neither the 2008 NPDES Permit nor the 2009 Draft Permit Amendment adequately protected water quality, as required under federal and state law. The CO&A effectively gave the facility license to contaminate the Monongahela with pollutants covered under the 2009 Draft Permit Amendment for at least three and a half years, and for other pollutants, the 2009 CO&A allowed contamination to continue indefinitely. *Id.* ¶¶ 80-89.

7. In light of the foregoing issues, CWA asked that the EHB: (1) invalidate the 2009 CO&A and (2) direct DEP to revoke the 2008 NPDES Permit and the WQM Permit. Amended Appeal at 23.

The Permit Amendments

8. While CWA's Amended Appeal was pending, in January 2010, DEP published notice of the 2009 Draft Permit Amendment. CWA promptly petitioned the EHB to prohibit operation of the Ronco Facility until final determination of CWA's expected challenge of that deficient permit. *See* Petition for Supersedeas (filed Feb. 5, 2010).

9. To avoid shutdown of the plant, Shallenberger agreed that it would not discharge any effluent from the Ronco Facility until DEP issued a final amended NPDES permit for the plant or until 60 days after DEP received all information necessary to prepare an amended

permit, whichever was earlier. Based on the agreement that the facility would not discharge, CWA withdrew its petition to prohibit operation of the Ronco facility.

10. More than eight months later, on October 21, 2010, Shallenberger submitted a revised application for an amended NPDES permit. On January 29, 2011, DEP proposed a new NPDES permit amendment that included Part 437 Limits and limits under the Pennsylvania regulations, 25 Pa. Code ch. 95 (“Chapter 95”), for TDS, sulfate, barium, and strontium.

11. On March 16, 2011, Clean Water Action and 18 other organizations submitted comments on the draft NPDES permit amendment, explaining a number of errors and omissions, including the failure to include the Chapter 95 limits for chloride. The next day, CWA also formally petitioned DEP for revocation of the 2008 NPDES Permit and the WQM Permit.

12. DEP did not issue the flawed permit amendment proposed in January 2011. Instead, DEP further revised the proposed amendment and, on June 6, 2012, DEP published a new draft amendment of the 2008 NPDES Permit (the “2012 NPDES Permit Amendment”). The 2012 NPDES Permit Amendment included the legally required Part 437 Limits and all of the Chapter 95 limitations, including limits on chloride discharges.

13. Since its construction, the Ronco Facility operated as a recycling facility, without discharging any effluent into the Monongahela River. The 2012 NPDES Permit Amendment required immediate compliance and therefore precluded any discharge whatsoever until new facilities capable of treating TDS were formally permitted by DEP and operational. CWA thus succeeded in obtaining a permit for the Ronco Facility that prevented contamination of the River with inadequately treated gas wastes.

Termination of the 2009 CO&A

14. For approximately another year, the Ronco Facility operated as a recycling facility, while DEP negotiated remedies for Shallenberger's repeated waste management violations. On May 29, 2013, DEP executed a new Consent Order and Agreement (the "2013 CO&A") with Shallenberger and Appalachian Water Services, LLC ("AWS"), which had acquired the Ronco Facility. A copy of the 2013 CO&A is annexed hereto as Exhibit A.

15. The 2013 CO&A does not allow any discharges from the Ronco Facility until AWS acquires an amended Water Quality Management permit. 2013 CO&A ¶ 3(a). The 2013 CO&A also provides for immediate shutdown of the Ronco Facility if AWS fails to comply with its terms, including compliance with the 2012 NPDES Permit Amendment. *Id.* ¶ 3(b)-(c).

16. Finally, the 2013 CO&A provides that, upon its execution, the 2009 CO&A, which is the subject of the Amended Appeal, would automatically terminate. *Id.* ¶ 19.

17. As of May 29, 2013, the unlawful 2008 NPDES Permit, the WQM Permit issued with the 2009 CO&A, and the 2009 CO&A challenged in CWA's Amended Appeal were no longer in effect. After more than three and a half years of litigation, CWA had achieved the purposes of both the Amended Appeal and petition for revocation of the 2008 NPDES Permit and the WQM Permit.

The Settlement

18. Having achieved its goals, CWA entered into a Settlement Agreement with DEP, which went into effect on July 29, 2013. The Settlement Agreement provided that CWA would withdraw its Amended Appeal, with prejudice, within 15 days of the effective date.

19. CWA hereby seeks to withdraw its Amended Appeal, with prejudice, in accordance with the Settlement Agreement. A voluntary withdrawal of an appeal "will be

without prejudice unless otherwise ordered by the Board.” EHB Practice and Procedure Manual § XIV(C). CWA therefore respectfully requests that the EHB so order this Notice of Withdrawal, With Prejudice, of Amended Appeal and sign the accompanying Order. Respectfully submitted this 7th day of August, 2013.

Deborah Goldberg

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Attorneys for Appellant Clean Water Action

SO ORDERED this ____ day of August, 2013.

ENVIRONMENTAL HEARING BOARD

THOMAS W. RENWAND
Chairman and Chief Judge

Exhibit A

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Appalachian Water Services, LLC	:	
	:	Solid Waste Management Act
and	:	Clean Streams Law
	:	
Shallenberger Construction, Inc.	:	
	:	
Masontown Borough	:	
Fayette County	:	
ENF. ID NO. <u>297323</u> G	:	

CONSENT ORDER AND AGREEMENT
and
TERMINATION OF THE
AUGUST 28, 2009 CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 29th day of May, 2013, by and among the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), Appalachian Water Services, LLC ("AWS") and Shallenberger Construction, Inc. ("Shallenberger").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Pennsylvania Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97, *as amended*, 35 P.S. §§ 6018.101-6018.1003 ("SWMA"); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 ("CSL"); 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 regulation promulgated thereunder.

B. AWS is a limited liability corporation, with a business address of 300 Cherrington Parkway, Suite 200, Coraopolis, PA 15425.

C. Shallenberger is a Pennsylvania corporation having a registered mailing address of 195 Enterprise Lane, Connellsville, PA 15425.

D. AWS owns and operates an oil and gas wastewater treatment and recycling plant located at 2326 McClellandtown Road, Masontown, PA 15461 (“Ronco” or the “Facility”). Shallenberger formerly owned the Facility, and owns 49 percent of AWS.

E. Oil and gas industry wastewaters are “solid waste” and “residual wastes” as those terms are defined in Section 103 of the SWMA, 35 P.S. § 6018.103 and Section 287.1 of the Department’s Residual Waste Regulations, 25 Pa. Code § 287.1.

F. Oil and gas industry wastewaters are “industrial waste” pursuant to Section 1 of the CSL, 35 P.S. § 691.1, and “pollutants” pursuant to Section 91.1 of the Department’s Clean Water Regulations, 25 Pa. Code § 91.1.

NPDES Permitting

G. On December 5, 2007, Shallenberger proposed to construct an oil and gas wastewater treatment plant, known as the Ronco Wastewater Treatment Plant, and submitted to the Department an application for a NPDES permit which would authorize the discharge of treated oil and gas wastewater into the Monongahela River, a water of the Commonwealth.

H. On September 25, 2008, the Department issued NPDES Permit PA0253723 to Shallenberger (“2008 NPDES Permit”) authorizing the discharge of treated industrial waste from the Facility to the Monongahela River. The 2008 NPDES Permit established specific effluent limitations, monitoring requirements and other permit conditions for the discharge.

I. On October 2, 2008, Shallenberger submitted to the Department a Water Quality Management Part II permit application seeking authorization to construct and operate wastewater treatment facilities.

J. On August 28, 2009, the Department and Shallenberger entered into a Consent Order and Agreement (“2009 CO&A”). A copy of the 2009 CO&A is attached hereto as Exhibit A.

K. Contemporaneously with the execution of the 2009 CO&A, on August 28, 2009, the Department issued Water Quality Management Part II Permit No. 2608201 (“2009 WQM Permit”) to Shallenberger.

L. On or about April 26, 2010, Shallenberger began operation of the Facility in a “recycle only” mode, treating oil and gas wastewater and returning the treated wastewater to the drilling industry for re-use. Shallenberger continues to operate in this recycle only mode and, to date, has not discharged treated wastewater from the Facility into the Monongahela River.

M. On June 6, 2012, the Department issued an amended NPDES Permit, Permit No. PA0253723-A1 (“Amended NPDES Permit”) to Shallenberger that included, among other things, effluent limitations for total dissolved solids and sulfate.

N. The parties have agreed that the 2009 CO&A is no longer necessary and have agreed to terminate the 2009 CO&A. If, at some point in the future, Shallenberger complies with the pre-conditions set forth in Paragraph 3(a) of this Consent Order and Agreement and discharges treated wastewater from its Facility, the discharge shall comply with Paragraph 3(b) of this Consent Order and Agreement and all applicable permits, regulations and laws.

Non-Compliance with Chapter 299 and Release

O. Special Condition F of the 2009 WQM Permit requires Shallenberger to comply with Section 299.122 of the Department's Residual Waste Regulations, 25 Pa. Code § 299.122, for residual waste storage tanks located at the Facility.

P. A Department inspection of the Facility was conducted on May 27, 2010. During that inspection Department staff observed evidence of a release of wastewater onto the ground, resulting from leaking sludge roll-off containers. Also observed were several waste storage tanks including one Frac tank used as a transfer tank and six additional Frac tanks used for incoming waste storage ("Frac Tanks"), which were not authorized for construction, installation or use under the 2009 WQM Permit.

Q. The Department issued a Notice of Violation to Shallenberger on August 18, 2010, following the May 27, 2010 inspection pertaining to the release of wastewater and the unauthorized tanks referenced in Paragraph P. Shallenberger submitted a written response to the August 18, 2010 Notice of Violation to the Department on August 25, 2010.

R. On August 26, 2010 and September 3, 2010, the Department conducted inspections of the Facility and observed that wastewater was leaking from the Frac Tanks onto the ground, and residual waste storage tanks in use at the Facility were not being operated in compliance with Chapter 299 of the Department's Residual Waste Regulations, including sections referencing secondary containment, high level alarms, leak detection and the requirement to provide protection of surface water and groundwater.

S. The Department issued a Notice of Violation to Shallenberger on September 3, 2010 pertaining to non-compliance with Chapter 299 referenced in Paragraph R. Shallenberger

submitted a written response to the September 3, 2010 Notice of Violation to the Department on September 17, 2010.

T. On October 1, 2010, the Department conducted an inspection of the Facility and observed a release of wastewater onto the ground, from a roll-off container holding sludge. The Department also observed that the residual waste storage frac tanks (Frac Tanks) referenced in Paragraphs P and R were still in use.

U. On August 30, 2011, the Department sent a letter via certified mail to Shallenberger detailing the violations and identifying the tanks that Shallenberger needed to address in order to bring the Facility into compliance with the Chapter 299 regulations. Shallenberger submitted written responses to the Department's August 30, 2011 letter on September 22, 2011 and December 27, 2011.

V. On September 23, 2011, the Department amended the 2009 WQM Permit ("First Amendment to the 2009 WQM Permit") authorizing the construction of new sludge handling treatment facilities.

W. On March 15, 2012, the Department conducted an inspection of the Facility and observed that the residual waste storage tanks referenced in Paragraphs P, R, and T were still in use at the Facility, and were not being operated in compliance with Chapter 299 of the Department's Residual Waste Regulations. Shallenberger has informed the Department that Shallenberger did not receive a copy of the March 15, 2012 inspection, a copy of which has since been provided to Shallenberger.

X. On December 4, 2012, the Department conducted an inspection of the Facility and observed a release of wastewater onto the ground from one or more roll-off containers holding sludge. Residual waste storage tanks in use at the Facility, including the Frac Tanks referenced

in Paragraphs P, R, T, and W, were still in use and not being operated in compliance with Chapter 299 of the Department's Residual Waste Regulations.

Y. The Department issued a notice of violation to Shallenberger on December 4, 2012, pertaining to the release of wastewater from roll-off container(s) holding sludge referenced in Paragraph X. Shallenberger submitted a written response to the December 4, 2012 Notice of Violation to the Department on December 7, 2012.

Z. The wastewaters referenced in Paragraphs P, R, T and X are "residual waste" and "solid waste" as those terms are defined in Section 103 of the SWMA, 35 P.S. § 6018.103 and "industrial waste" as defined in Section 1 of the CSL, 35 § 691.1.

AA. Shallenberger does not possess a permit for the disposal of solid waste at the Facility.

Residual Waste Processing Permit/General Permit for Beneficial Use

AB. Shallenberger was first notified of its obligation to obtain authorization to treat waste at the Facility under an authorization from the Waste Management program during a pre-application meeting held on August 19, 2009.

AC. Shallenberger began operations at the Facility on or about April 26, 2010. Pursuant to Section 287.102 of the Department's Residual Waste Regulations, Shallenberger is required but has failed to obtain a solid waste management permit in order to process residual waste at the Facility. Special Condition H of the 2009 WQM Part II Permit required Shallenberger to obtain a Waste Management authorization thirty (30) days prior to beginning operation. Shallenberger has not complied with these requirements.

AD. On September 3, 2010, the Department issued to Shallenberger a Notice of Violation for operating a residual waste treatment facility without authorization and informing Shallenberger of its obligation to obtain a Waste Management permit.

AE. On November 22, 2010, Shallenberger submitted to the Department an application for registration under Waste Management General Permit WMGR123.

AF. On January 5, 2011, the Department sent Shallenberger a technical deficiency letter providing Shallenberger ninety (90) days to respond to the deficiencies.

AG. On March 15, 2012, the Department conducted an inspection of the Facility, and observed the Facility to be operating without a Waste Management permit authorization. Shallenberger has informed the Department that Shallenberger did not receive a copy of the March 15, 2012 inspection, a copy of which has since been provided to Shallenberger.

AH. Shallenberger has failed to obtain authorization to process residual waste and continues to operate without authorization in violation of the Solid Waste Management Act and the Department's Residual Waste Regulations.

AI. Shallenberger has processed in excess of 110,000,000 gallons of wastewater since at least April 2010, without an authorization pursuant to a Waste Management permit.

Violations

AJ. Shallenberger's release of wastewater from residual waste storage tanks and roll off containers onto the ground and into the environment as referenced in Paragraphs P, R, T. and X constitutes "disposal" of a solid waste as that term is defined in Section 103 of the SWMA, 35 P.S. § 6018.103.

AK. Shallenberger's disposal of solid waste at the Facility without authorization from the Department constitutes a violation of Section 287.101(a) of the Department's Residual Waste

Regulations, 25 Pa. Code § 287.101(a) and Sections 301, 302, 501 and 610 (1), (2), (4) and (9) of the SWMA, 35 P.S. §§ 6018.301, 6018.302, 6018.501 and 6018.610 (1), (2), (4) and (9).

AL. Shallenberger's operation of leaking waste storage tanks as referenced in Paragraph R constitutes a violation of Section 299.114 of the Department's Residual Waste Regulations, 25 Pa. Code § 299.114 and Sections 610 (1), (2), (4) and (9) of the SWMA, 35 P.S. §§ 6018.610 (1), (2), (4) and (9).

AM. Shallenberger's failure to comply with Chapter 299 regarding the residual waste storage tanks referenced in Paragraphs P, R, T, W and X constitutes violations of Sections 299.122(a) and (b), 25 Pa. Code § 299.122(a) and (b), and Sections 610 (1), (2), (4) and (9) of the SWMA, 35 P.S. §§ 6018.610 (1), (2), (4) and (9).

AN. Shallenberger's failure to provide protection of surface and groundwater as referenced in Paragraphs P, R, and X constitutes violations of Section 299.116 of the Department's Residual Waste Regulations, 25 Pa. Code § 299.116.

AO. Shallenberger's use of, and failure to obtain authorization for the residual waste storage tanks referenced in Paragraph P violated the 2009 WQM Permit and Section 308 of the CSL, 35 P.S. § 691.308.

AP. Shallenberger's operation of the Facility as referenced in Paragraph AH without an authorization pursuant to a Waste Management permit constitutes violations of Section 287.101 of Department's Residual Waste Regulations, 25 Pa. Code § 287.101, and Sections 301, 302, 501(a), 610(2), (4), and (9) of the SWMA, 35 P.S. §§ 6018.301, 6018.302, 6018.501(a), and 6018.610(2), (4), and (9).

AQ. Shallenberger's conduct as described above constitutes a public nuisance and unlawful conduct pursuant to Sections 601 and 610 of the SWMA, 35 P.S. §§ 6018.601 and

6018.610, and subjects Shallenberger to civil penalty liability under Section 605 of the SWMA, 35 P.S. § 6018.605.

AR. Shallenberger's violations of the 2009 WQM Permit described in Paragraphs AC and AO, above, constitutes a statutory nuisance under Section 308 of the CSL, 35 P.S. § 691.308, and constitutes unlawful conduct under Section 611 of the CSL, 35 P.S. § 691.611.

Necessary Additional Amendments to the 2009 WQM Permit

AS. In addition to submitting an application to the Department for registration under Waste Management General Permit WMGR123, Shallenberger has also submitted to the Department an application to amend the 2009 WQM Permit a second time ("Second Amendment to the 2009 WQM Permit"). The Second Amendment to the 2009 WQM Permit will authorize, among other things, the installation, construction, operation and maintenance of additional processing units and a fresh water impoundment while eliminating the use of the Frac Tanks currently at the Facility. The facilities authorized under both permits should be identical.

AT. The wastewater treatment facilities currently at the Facility and to be authorized by the Second Amendment to the 2009 WQM Permit are not capable of achieving the effluent limitations established in the Amended NPDES Permit including the effluent limitation for total dissolved solids. Prior to discharging under the Amended NPDES Permit, Shallenberger will need to construct additional wastewater treatment facilities under the authorization of a third amendment to the 2009 WQM Permit ("Third Amendment to the 2009 WQM Permit").

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 AWS and Shallenberger as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 104(7) and 602 of the SWMA, 35 P.S.

§§ 6018.104(7) and 6018.602, Sections 5, 316, 402 and 610 of the CSL, 35 P.S. §§ 691.5, 691.316, 691.402 and 691.610; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. AWS and Shallenberger agree that the findings in Paragraphs A through AI are true and correct and, in any matter or proceeding involving AWS and/or Shallenberger and the Department, neither AWS nor Shallenberger shall 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. Corrective Action.

a. Prior to beginning construction of any treatment units designed to achieve effluent limitations of the Amended NPDES Permit or discharging any industrial waste from the Facility, AWS shall apply for and receive a Third Amendment to the WQM Permit authorizing the construction and installation of wastewater treatment works at the Facility.

b. All discharges from the Facility shall comply with the effluent limitations and conditions set forth in the Amended NPDES Permit and the Third Amendment to the WQM Permit as well as any subsequently issued NPDES Permits and WQM Permits.

c. If AWS fails to comply with the requirements of this Consent Order and Agreement, AWS and Shallenberger shall ensure that all waste processing and storage operations immediately cease at the Facility, and that all waste materials located at the Facility are properly disposed of. AWS and Shallenberger shall, within thirty (30) days of receipt of written notice from the Department, either remove and dispose of such waste if Department approval for disposal is not necessary, or submit full and complete requests for approval for disposal of such waste, if Department approval is needed; and shall thereupon either (i) remove and properly dispose of such waste within thirty (30) days of receipt of Department approval of such request(s), or (ii) remove and properly dispose of such waste at another facility lawfully entitled to accept such waste within ninety (90) days of receipt of Department denial of such request.

d. Within ten (10) days of AWS' initiation of operations of the equipment authorized under the WMGR123SW001 permit and the Second Amendment to the WQM Permit or 180 days after execution of this Consent Order and Agreement, whichever is sooner, AWS shall permanently cease operating the Frac Tanks, and shall remove, properly transport and manage such equipment within an additional ninety (90) days.

4. Civil Penalty Settlement. Upon the execution of this Consent Order and Agreement, Shallenberger and AWS, jointly and severally, shall pay a civil penalty of SIXTY THOUSAND DOLLARS (\$60,000.00) This payment is in settlement of the Department's claim for civil penalties for the violations set forth in the paragraphs above, covering the period from May 2010 through execution of this Consent Order and Agreement. The payment shall be made by corporate check or the like made payable to The "Commonwealth of Pennsylvania, Solid Waste Abatement Fund" sent to the attention of: Michael G. Forbeck, Regional Manager, Waste

Management, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

5. Stipulated Civil Penalties.

a. In the event AWS fails to comply in a timely manner with any term or provision of Paragraphs 3(a) through 3(c) of this Consent Order and Agreement, AWS shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) per day for each violation.

b. In the event AWS fails to comply in a timely manner with Paragraph 3(d) of this Consent Order and Agreement, AWS shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of One Thousand Dollars (\$1000.00) per day for each day of violation.

c. Stipulated Civil Penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded to the Solid Waste Abatement Fund as described in Paragraph 4 above.

d. Any payment under this paragraph shall neither waive AWS's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel AWS compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only AWS's liability for civil penalties arising from the violations of this Consent Order and Agreement for which the payment is made.

e. Stipulated Civil Penalties shall be due automatically and without notice.

6. Additional Remedies.

a. In the event AWS or Shallenberger fail 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 5 (Stipulated Civil 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 civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

7. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. AWS and Shallenberger reserve the right to challenge any action which the Department may take to require those measures.

8. Liability of Operator. AWS and Shallenberger shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by their officers, agents, employees, or contractors. AWS and Shallenberger also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by their successors and assigns.

9. Transfer of Site.

a. 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 Site or any part thereof.

b. If AWS intends to transfer any legal or equitable interest in the Site which is affected by this Consent Order and Agreement, AWS shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest 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 AWS and Shallenberger's duties and obligations under this Consent Order and Agreement upon transfer of the Site. AWS and Shallenberger waive any right that it may have to challenge the Department's decision in this regard.

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

Michael Forbeck
Regional Manager, Waste Management
Pa. Dept. of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222
412-442-4000

and

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

11. Correspondence with AWS and Shallenberger. All correspondence with Shallenberger concerning this Consent Order and Agreement shall be addressed to:

Tuffy Shallenberger
Shallenberger Construction
195 Enterprise Lane

Connellsville, PA 15425
724-628-8048

Shallenberger 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 upon Shallenberger, including its enforcement, may be made by mailing a copy by first class mail to the above address.

All correspondence with AWS concerning this Consent Order and Agreement shall be addressed to:

Damian C. Georgino
Vice President
Appalachian Water Services, LLC
300 Cherrington Parkway, Suite 200
Coraopolis, PA 15108
412-291-1983

AWS 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 upon AWS, including its enforcement, may be made by mailing a copy by first class mail to the above address

12. 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.

13. 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. Execution of this Consent Order and Agreement may be accomplished via separately executed copies of the document.

14. 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.

15. 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 each of the parties hereto.

16. 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.

17. Decisions Under Consent Order. Any decision which the Department makes under the provisions of 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 Shallenberger or AWS may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

18. Termination. The obligations of this Consent Order and Agreement shall terminate three (3) years after execution of this Consent Order and Agreement, or such earlier date if the Department determines that termination of the Consent Order and Agreement is in the best interests of the public health and the protection of the environment.

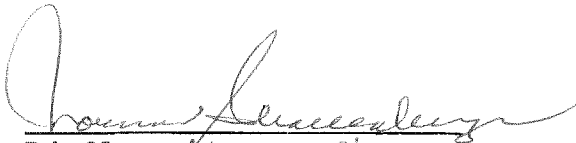
19. Termination of 2009 CO&A. By mutual consent, upon execution of this Consent Order and Agreement by the parties, the August 28, 2009 Consent Order and Agreement executed by Shallenberger and the Department shall be automatically terminated.

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 AWS and Shallenberger 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 AWS and Shallenberger; that AWS and Shallenberger consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that AWS and Shallenberger hereby knowingly waive their 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, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by AWS's and Shallenberger's attorney(s) certifies only that the agreement has been signed after consulting with counsel.

FOR SHALLENBERGER CONSTRUCTION
INC.:



Print Name: TERRANCE C. Shallenberger, JR
President or ~~Vice President~~



Print Name: NORMA Shallenberger
Secretary or Treasurer

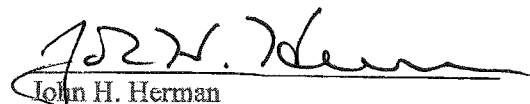


Print Name: DAVID Overstreet
Attorney for Shallenberger

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF ENVIRONMENTAL PROTECTION:

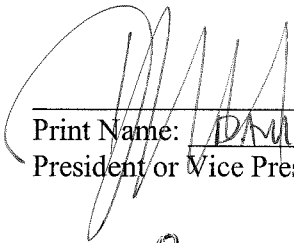


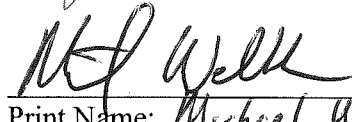
Michael G. Forbeck
Program Manager,
Waste Management



John H. Herman
Assistant Regional Counsel

FOR AWS:


Print Name: DANNIN GERGMO
President or Vice President


Print Name: Michael Welch
Secretary or Treasurer


Print Name: DAVID OVERSTREET
Attorney for AWS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Withdrawal, With Prejudice, of Amended Notice of Appeal and Exhibit A was served this 7th day of August, 2013, by electronic mail, on:

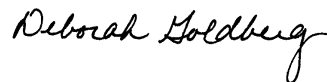
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SW Regional Offices
400 Waterfront Drive
Pittsburgh, PA 15222-4745

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