

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:

Steelton Borough Authority	:	Violations of the Pennsylvania Safe
123 North Front Street	:	Drinking Water Act and Regulations
Steelton, PA 17113	:	Steelton Borough Authority
	:	PWSID No. 7220036
	:	Steelton Borough, Dauphin County

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 31 day of March, 2014, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Steelton Borough Authority.

FINDINGS

- A. The Department is the executive agency with the duty and authority to administer and enforce, inter alia, the Pennsylvania Safe Drinking Water Act, 35 P.S. § 721.1 et seq. ("SDWA"), Section 1917-A of the Administrative Code, the Act of April 9, 1929, P. L. 177 as amended, 71 P.S. § 510-17 ("Administrative Code"), and the Rules and Regulations promulgated there under.
- B. The Steelton Borough Authority owns and operates the Steelton water treatment plant. The Steelton Borough Authority ("Steelton") maintained an address of 123 North Front Street, Steelton, PA 17113.
- C. Steelton is a "person" and a "supplier of water" as those terms are defined in Section 3 of the Safe Drinking Water Act, 35 P.S. § 721.3 and at Section 109.1 of the Safe Drinking Water Regulations, 25 Pa. Code § 109.1.
- D. Steelton owns and/or operates a "public water system" and a "community water system" as those terms are defined in Section 3 of the Safe Drinking Water Act, 35 P.S. § 721.3, and Section 109.1 of the Safe Drinking Water Regulations, 25 Pa. Code § 109.1. Steelton currently serves approximately 6,229 individuals through 2,402 service connections.
- E. The Steelton water system currently consists of a surface water intake, conventional filtration plant, storage, pumping, and distribution facilities.
- F. The Department issued SDWA Operation Permit 2272501-A to Steelton as permittee on July 7, 1997.
- G. On April 15, 2005, the Department issued SDWA Construction Permit 2204508 to Steelton as permittee approving construction of major modifications to the water system. Condition 2 of

SDWA Construction Permit 2204508 requires Steelton to: "Upon completion of construction in accordance with the approved plans and specifications, the permittee shall submit a Certificate of Construction/Modification to the Department."

- H. On April 6, 2010, the Department issued SDWA Construction Permit 2209510 to Steelton as permittee approving construction of major modifications to the filter plant of the water system.
- I. Condition 3 of SDWA Construction Permit 2209510 requires Steelton to: "Upon completion of construction in accordance with the approved plans and specifications, the permittee shall submit a Certificate of Construction/Modification to the Department." In addition, Condition 4 requires: "Prior to returning a filter unit or clarifier to service, an operation permit for that facility must first be obtained from the Department."
- J. On November 18, 19, and 20, 2013, the Department conducted a Filter Plant Performance Evaluation (FPPE) and Sanitary Survey of the Steelton water system. During the FPPE and Sanitary Survey, the Department discovered significant violations of the Safe Drinking Water Act and its Regulations as well as violations of Steelton's construction permits.

FAILURE TO OBTAIN AN OPERATION PERMIT

- K. Pursuant to Section 7 of the SDWA, it is unlawful for any person to construct, operate or substantially modify a community water system without first having obtained a written permit from the Department. 35 P.S. § 721.7
- L. Section 109.501(c) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.501(c), states that "A person may not operate a public water system without first having obtained an operation permit from the Department under § 109.504 (relating to public water system operation permits) except as provided in §§ 109.502 and 109.505.
- M. During the 2013 FPPE and Sanitary Survey, the Department observed that Steelton returned the water system to operation following the major modifications approved in 2010 SDWA Construction Permit 2209510 without submitting a Certificate of Construction/Modification to the Department and without having obtained a SDWA operation permit from the Department in violation of the SDWA, in violation of Section 109.501(c) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.501(c) and in violation of Condition 3 of SDWA Construction Permit 2209510.
- N. Prior to the above-described violation of 25 Pa. Code § 109.501(c), Steelton failed to obtain a SDWA operation permit from the Department prior to putting the modifications approved in the 2005 SDWA Construction Permit 2204508 into operation and failed to submit a Certificate of Construction/Modification to the Department, in violation of Condition 2 of SDWA Construction Permit 2204508.

FAILURE TO MAINTAIN AT LEAST 1-LOG INACTIVATION

- O. Section 109.202(c)(1)(ii) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.202(c)(1)(ii), requires public water systems to achieve at least 90% inactivation (1-log inactivation) of Giardia cysts, as determined by CT ("residual disinfectant concentration times contact time") methods established by US EPA.

- P. During the November 18-20 2013 FPPE and Sanitary Survey, Department representatives requested records of CT calculations conducted at Steelton. Steelton's operator provided the Department a copy of CT calculation records prepared by Steelton for January and February, 2013. In addition, after the 2013 FPPE, the Department requested and obtained from Steelton additional CT calculation records prepared by Steelton from March through November, 2013. After reviewing these CT calculations records, the Department determined that, on at least 24 days in 2013, Steelton failed to meet the 1-log inactivation of Giardia cysts in violation of Section 109.202(c)(1)(ii) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.202(c)(1)(ii).

NOTIFICATION VIOLATIONS

- Q. Section 109.701(a)(3)(iii) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.701(a)(3)(iii), requires a public water supplier to report to the Department within 1 hour of discovery of circumstances which may adversely affect the quality or quantity of drinking water including: ••• (B) a failure or significant interruption in key water treatment processes.
- R. Section 109.408(a)(10) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.408(a)(10), requires a public water supplier to provide Tier 1 public notice during an emergency situation as defined in 109.701(a)(3)(iii).
- S. Section 109.408(b) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.408(b), requires public water suppliers to provide public notice no later than 24 hours after the water supplier learns of the violation, report the circumstances to the Department within 1 hour of discovery of the violation, and to initiate consultation with the Department no later than 24 hours after the water supplier learns of the violation.
- T. For at least 24 days that Steelton prepared CT calculation records which demonstrated that it failed to meet the 1-log inactivation of Giardia cysts, Steelton failed to notify the Department within 1 hour of discovery of its failure to maintain 1-log inactivation, which is a violation of Section 109.701(a)(3)(iii) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.701(a)(3)(iii) and Section 109.408(b) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.408(b).
- U. For at least 24 days that Steelton prepared CT calculation records which demonstrated that it failed to meet the 1-log inactivation of Giardia cysts, Steelton did not issue Tier 1 public notice within 24 hours in response to the breakdown in treatment due to its failure to maintain 1-log inactivation, in violation of Section 109.408(a)(10) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.408(a)(10), and Section 109.408(b) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.408(b).
- V. For at least 24 days that Steelton prepared CT calculation records which demonstrated that it failed to meet the 1-log inactivation of Giardia cysts, Steelton failed to consult with the Department within 24 hours of discovery of the failure to maintain 1-log inactivation, in violation of Section 109.408(b) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.408(b).

TURBIDITY MONITORING VIOLATIONS

- W. Section 109.301(1)(iv) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.301(1)(iv), states, in part, "public water suppliers providing conventional or direct filtration and serving

fewer than 10,000 people and using surface water or GUDI sources shall conduct continuous monitoring of turbidity for each individual filter using an approved method under the EPA regulation in 40 CFR 141.74(a) and record the results at least every 15 minutes.”

- X. During the November 18-20 Sanitary Survey and FPPE, Department and Steelton representatives found that the individual filter effluent (IFE) recording device had failed because Steelton’s former operator had failed to replace the chart paper since August 4, 2013. This failure continued until November 20, 2013. Steelton used this device to record its continuous turbidity readings for its four filters. Steelton thus failed to record the individual filter turbidity for 108 days in violation of Section 109.301(1)(iv) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.301(1)(iv).
- Y. Section 109.301(1)(iv)(D) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.301(1)(iv)(D), states that, “A public water supplier serving fewer than 10,000 persons has a maximum of 14 days following the failure of the equipment to repair or replace the equipment before a violation is incurred.”
- Z. Steelton’s continuous IFE recording equipment failed on August 4, 2013 and was not repaired or replaced until November 20, 2013, and therefore, Steelton violated Section 109.301(1)(iv)(D) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.301(1)(iv)(D), for 94 days.
- AA. Section 109.701(e)(1) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.701(e)(1), requires public water suppliers subject to individual filter monitoring under Section 109.301(1)(iv) to report that they conducted individual filter monitoring within 10 days following the end of each month that the system serves water to the public.
- BB. Section 109.701(i)(1) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.701(i)(1), states that each water supplier shall be responsible for the accurate reporting of data required under subsection (j) to the Department.
- CC. Steelton’s former operator reported to the Department that IFE turbidity readings had been taken and recorded every 15 minutes and that no results exceeded the IFE trigger levels, throughout August, September and October, 2013, despite the failure of its IFE recording device during this time period, in violation of Section 109.701(e)(1) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.701(e)(1), and in violation of Section 109.701(i)(1) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.701(i)(1).

ADDITIONAL VIOLATIONS

- DD. Section 109.4 of the Safe Drinking Water Regulations, 25 Pa. Code § 109.4, states, “Public water suppliers shall: ... (2) Provide treatment adequate to assure that the public health is protected. (3) Provide and effectively operate and maintain the public water system facilities. (4) Take whatever investigative or corrective action is necessary to assure that safe and potable water is continuously supplied to the users.”
- EE. Steelton, by violating each of the above cited provisions, violated Section 109.4 of the Safe Drinking Water Regulations, 25 Pa. Code § 109.4.
- FF. Section 109.707(c) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.707(c), requires

community water suppliers to review and update their Emergency Response Plan at least annually and to record the date on the plan.

- GG. During the November 18-20, 2013 FPPE and Sanitary Survey, the Department determined that Steelton's Emergency Response Plan had not been updated in more than a year, in violation of Section 109.707(c) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.707(c).
- HH. Section 109.703(a) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.703(a), requires public water system facilities approved by written permit from the Department to be operated in a manner consistent with the terms and conditions of the permit to achieve the level of treatment for which the facilities were designed.
- II. Conditions 1 and 2 of 2010 SDWA Construction Permit 2209510 require Steelton to submit microbiological test reports and volatile organic compound (VOC) test reports to the Department with its Certificate of Construction/Modification. As of the date of this COA, Steelton has failed to submit either the required microbiological or the VOC test reports in violation of Conditions 1 and 2 of 2010 SDWA Construction Permit 2209510 and Section 109.703(a) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.703(a).
- JJ. In the application submitted for SDWA Construction Permit 2209510, Steelton indicated that it would not install filter to waste equipment and thus, pursuant to Section 109.703(b)(5) and Condition 5 of 2010 SDWA Construction Permit 2209510, Steelton was required to submit a performance study to the Department explaining in detail all operation techniques to be used to prevent startup turbidity spikes. As of this date, the Department has not received such performance study in violation of Condition 5 of 2010 SDWA Construction Permit 2209510 and in violation of Section 109.703 (b)(5) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.703 (b)(5).
- KK. The violations described in Paragraphs A. through JJ. above constitute unlawful conduct under the Safe Drinking Water Act, 35 P.S. § 721.1 *et seq.*, and the Safe Drinking Water regulations, 25 Pa. Chapter 109, and subject Steelton to a claim for civil penalties under Section 13 (g) of the SDWA, 35 P.S. § 721.13(g).

ORDER AND AGREEMENT

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 further litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Steelton Borough Authority as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the SDWA, 35 P.S. § 721.5; and Section 1917-A of the Administrative Code, *supra*.

2. Findings.

- (a) Steelton agrees that the findings in Paragraphs A. through KK. are true and correct and, in any matter or proceeding involving Steelton and the Department, Steelton 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 ("CO&A") in any matter or proceeding.

3. Corrective Actions.

- (a) Immediately upon signing this CO&A, Steelton shall use an accurate method to calculate 1-log inactivation of Giardia prior to the Entry Point, and shall accurately identify the lowest Giardia inactivation each calendar day. Steelton shall submit the information to the Department within 10 days following the month in which the results are determined.
- (b) On or before May 9, 2014, Steelton shall issue Tier 2 Public Notification as provided in appendix "A" to each customer. Within 10 days following the Public Notification, Steelton shall submit a copy of the notification to the Department, along with a Public Notice Certification, as required by Section 109.701(a)(4) of the Safe Drinking Water Regulations, 25 Pa. Code § 109.701(a)(4).
- (c) Within 30 days of the date of this CO&A, Dan Scheitrum shall no longer be a certified operator for the Steelton public water system, shall no longer make any process control decisions for Steelton, nor report any monitoring results to the Department on behalf of Steelton. Steelton shall also retain within 30 days a new and properly certified water operator to make process control decisions and report for the Steelton public water system.
- (d) Within 30 days of the date of this CO&A, Steelton shall submit all the documentation necessary to obtain the required operation permits for Construction Permits 2209510 and 2204508. The following minimum information shall be submitted:
 - 1) Certificate of Construction/Modification for Construction Permit 2204508
 - 2) Bacteriological results required by Construction Permit 2204508
 - 3) Certificate of Construction/Modification for Construction Permit 2209510
 - 4) Bacteriological results required by Construction Permit 2209510
 - 5) VOC results required by Construction Permit 2209510
- (e) Within 30 days of the date of this CO&A, Steelton shall submit specifications for the polymer Superfloc N300, specifications for the polymer feed equipment, and an engineer's report justifying the use of Superfloc N300, which is currently being used at the filter plant, and shall request of the Department an amendment to their operation permit to include this treatment chemical.
- (f) Within 30 days of the date of this CO&A, Steelton shall submit to the Department for its approval a protocol for conducting the filter performance study required by Condition 5 of Construction Permit 2209510. The study shall be designed to determine the operating techniques that will be used to reduce the startup turbidity spike, and shall provide supporting data, including standard operating procedures (SOPs).
- (g) Within 30 days of the date of this CO&A, Steelton shall begin taking the following samples monthly for the next 12 months:

Total Organic Carbon(TOC) in the raw water
Total Organic Carbon (TOC) in the filtered water
Total Trihalomethanes (TTHM) in the settled water
Total Trihalomethanes (TTHM) in the finished water
Haloacetic Acids (HAA5) in the settled water
Haloacetic Acids (HAA5) in the finished water

- (h) Within 90 days of the date of this CO&A, Steelton shall update their Emergency Response Plan and Operation and Maintenance Plan. The plans shall include an updated procedure for issuing Public Notice.
- (i) Within 90 days of the date of this CO&A, Steelton shall submit to the Department for its approval a report detailing the progress made by Steelton in addressing each of the above Corrective Actions (a) through (h).
- (j) Within 120 days of the date of this CO&A, Steelton shall develop and submit to the Department for approval, a plan which details the procedure for filter plant operators to follow in order to achieve 3-log inactivation of Giardia in an emergency situation under all conditions.
- (k) Within 120 days of the date of this CO&A, Steelton shall develop, submit to the Department and implement a procedure to monitor head loss on each filter numerically, and shall begin recording the starting and ending head loss each calendar day.
- (l) Within 150 days of the date of this CO&A, Steelton shall install and make operational a continuous chlorine residual monitoring and recording device on the clarifier effluent.
- (m) Within 20 days after installation of a continuous chlorine analyzer on the clarifier effluent, Steelton shall set low level chlorine alarms on both the clarifier effluent and entry point monitors, such that 1-log inactivation of Giardia will be ensured at all times.
- (n) Within 150 days of the date of this CO&A, Steelton shall determine the cause of excessive particulate accumulation in the individual filter effluent turbidimeter sample lines, correct the situation and report the results of that work to the Department.
- (o) Within 165 days of the date of this CO&A, Steelton shall submit to the Department for its approval a report detailing the progress made by Steelton in addressing each of the above Corrective Actions (j) through (n).
- (p) Within 240 days of the date of this CO&A, Steelton shall install equipment to continuously monitor and record settled water turbidity. Prior to installation, Steelton shall submit a description of the proposed turbidimeter location to the Department for its approval.
- (q) Within 240 days of the date of this CO&A, Steelton shall conduct an inspection and media evaluation of each filter to determine the effectiveness of that filter and submit results for each of the four filters to the Department.
- (r) Within 240 days of the date of this CO&A, Steelton shall conduct a review of filter backwash effectiveness, which shall include media expansion measurements. As part of this review, a Standard Operating Procedure for determining filter run times shall be developed. Prior to

conducting the review, Steelton shall develop a protocol and submit the protocol to the Department for its approval.

- (s) Within 240 days of the date of this CO&A, Steelton shall complete the filter performance study referenced in paragraph (f), and shall submit a report to the Department. In the report, Steelton shall detail the operating techniques that will be used to reduce the startup turbidity spike and provide supporting data, including SOPs, in accordance with Condition 5 of Construction Permit 2209510.
- (t) Within 255 days of the date of this CO&A, Steelton shall submit to the Department for its approval a report detailing the progress made by Steelton in addressing each of the above Corrective Actions (p) through (s).
- (u) Within 1 year of the date of this CO&A, Steelton shall submit a study to the Department showing the TOC, TTHM, and HAA5 sampling results required under paragraph 3.(g) of this CO&A, above. The study shall include all TOC, TTHM and HAA5 results available to date, as well as recommendations for maintaining optimized DBP removal through the filter plant.
- (v) Within 365 days of the date of this CO&A, Steelton shall submit to the Department for its approval a report detailing the progress made by Steelton in addressing Corrective Actions (u) above.

4. Civil Penalty Settlement.

- (a) Upon execution of the CO&A, Steelton shall pay a civil penalty of FIFTY-FIVE THOUSAND TWO HUNDRED DOLLARS (\$55,200.00). This payment is in partial settlement of the Department's claim for civil penalties for the violations set forth in paragraphs G. through JJ. This portion of the civil penalty may be paid in quarterly installments of THIRTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$13,800.00) each, commencing upon execution of this CO&A. The payment shall be made payable to the "PA Safe Drinking Water Fund", and shall be forwarded to:

Ms. Lynne Scheetz
Operations Chief
PA DEP, SDW
909 Elmerton Avenue
Harrisburg, PA 17110-8200

- (b) Within 105 days of the date of this CO&A, Steelton shall pay an additional civil penalty of THIRTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$13,800.00). This payment is in partial settlement of the Department's claim for civil penalties for the violations set forth in paragraphs G. through JJ. However, if Steelton has timely completed Corrective Actions (a) through (h) to the Department's satisfaction as evidenced by a written approval, this portion of the civil penalty will be waived.
- (c) Within 180 days of the date of this CO&A, Steelton shall pay an additional civil penalty of THIRTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$13,800.00). This payment is in partial settlement of the Department's claim for civil penalties for the violations set forth in paragraphs G. through JJ. However, if Steelton has timely completed Corrective Actions (j) through (n) to the Department's satisfaction as evidenced by a written approval, this portion of the civil penalty will be waived.

- (d) Within 270 days of the date of this CO&A, Steelton shall pay an additional civil penalty of THIRTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$13,800.00). This payment is in partial settlement of the Department's claim for civil penalties for the violations set forth in paragraphs G. through JJ. However, if Steelton has timely completed Corrective Actions (p) through (s) to the Department's satisfaction as evidenced by a written approval, this portion of the civil penalty will be waived.
- (e) Within 380 days of the date of this CO&A, Steelton shall pay an additional civil penalty of THIRTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$13,800.00). This payment is in partial settlement of the Department's claim for civil penalties for the violations set forth in paragraphs G. through JJ. However, if Steelton has timely completed Corrective Action (u) to the Department's satisfaction as evidenced by a written approval, this portion of the civil penalty will be waived.

5. Remedies.

- (a) In the event Steelton fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.
- (b) The remedies provided by this paragraph and Paragraph 4 (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 civil penalty is paid.

6. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. Steelton reserves the right to challenge any action that the Department may take to require those measures.

7. Liability of Operator. Steelton shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its agents, employees, or contractors. Except as provided in paragraph 8(c), Steelton shall also be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

8. 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 Steelton Borough Authority, or any part thereof.
- (b) If Steelton Borough Authority intends to transfer any legal or equitable interest in the Steelton water system which is affected by this Consent Order and Agreement, Steelton shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the named individual in Paragraph 9. below.

(c) The Department in its sole discretion may agree to modify or terminate Steelton's duties and obligations under this Consent Order and Agreement upon transfer of Steelton Borough Authority. Steelton waives any right that it may have to challenge the Department's decision in this regard.

9. Correspondence with Department. A copy of all correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Ms. Lynne Scheetz
Operations Chief
PA DEP, Safe Drinking Water
909 Elmerton Avenue
Harrisburg, PA 17110-8200

10. Correspondence with Steelton Borough Authority. All correspondence with Steelton concerning this Consent Order and Agreement shall be addressed to:

Sara Gellatly
Steelton Borough Authority
123 North Front Street
Steelton, PA 17113

Steelton 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.

11. Force Majeure.

- (a) In the event that Steelton is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstances beyond its control and which Steelton, by the exercise of all reasonable diligence, is unable to prevent, then Steelton may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond Steelton's control. Steelton's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.
- (b) Steelton shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from Steelton, specifying the reasons for the delay, the expected duration of the delay, and the efforts that have been made and are being made by Steelton to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. Steelton's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.
- (c) The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Steelton and other information available to the Department.

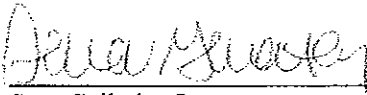
In any subsequent litigation, Steelton shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

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.
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 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.** Except as provided in Paragraph 3, any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, 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 that Steelton may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.
18. **Termination.** This Consent Order and Agreement shall terminate on June 30, 2015 or whenever the Department determines that Steelton has complied with all the requirements of Paragraph 3, whichever is later.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. Steelton Borough Authority certifies under penalty of law, as provided by 18 Pa. C.S. §4904, that it is authorized to execute this Consent Order and Agreement, that it consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that it 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.

FOR:

BOROUGH OF STEELTON



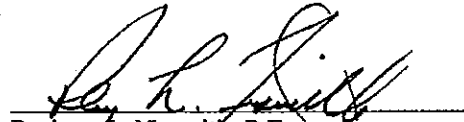
Sara Gellatly, Secretary
Borough Authority




Michael L. Solomon
Counsel for Steelton Borough Authority

FOR:

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF
ENVIRONMENTAL PROTECTION



Rodney L. Nesmith, P.E.
Program Manager



Ann R. Johnston
Assistant Counsel