

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:

Mr. James Heisey : Violations of the Clean Streams Law,
Fredericksburg Sewer and Water Authority : and DEP Chapter 102 of Title 25, of the Pa.
113 East Main Street : Code, and the Dam Safety and Encroachments
Fredericksburg, PA 17026 : Act, and DEP Chapter 105 of Title 25, of the
: Pa. Code.

Mr. Jeffrey D. Steckbeck, P.E.
Steckbeck Engineering and Surveying, Inc.
279 North Zinns Road, Suite A
Lebanon, PA 17042

Mr. Carlos Lameira
Joao and Bradley Construction Company
4211 Tracy Lane
Bethlehem, PA 18020

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement ("COA") is entered into this 8th day of December, 2014 by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), Fredericksburg Sewer and Water Authority ("FSWA"), Steckbeck Engineering and Surveying, Inc. ("Steckbeck"), and Joao and Bradley Construction Company ("Joao").

FINDINGS

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, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1 et seq. ("The Clean Streams Law"); the Dam Safety and Encroachment Act, the Act of November 26, 1978 P.L. 1375, as amended, 32 P.S. §§ 693.1 et seq. ("Dam Safety and Encroachment 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; and the rules and regulations promulgated thereunder.
- B. FSWA is a Pennsylvania Business Corporation which maintains a mailing address 113 East Main Street, Fredericksburg, PA 17026. FSWA's registered office address is P.O. Box 161, Fredericksburg, PA 17026. James Heisey is the Chairman of FSWA.
- C. FSWA was the permittee for the Fredericksburg Sewer Main Project in Bethel Township, Lebanon County, Pennsylvania ("Site").
- D. Steckbeck is a Pennsylvania Business Corporation which maintains a mailing address of 279 North Zinns Road, Suite A, Lebanon, PA 17042. Jeffrey D. Steckbeck, P.E. is Chief Executive Officer and President for Steckbeck.

- E. Steckbeck prepared the plan and provided daily project oversight for the Site.
- F. Joao is a Pennsylvania Business Corporation which maintains a mailing address of 4211 Tracy Lane, Bethlehem, PA 18020. Carlos Lameira is Joao's Treasurer and Joao's Manager for the Site.
- G. Joao is the general contractor at the Site.
- H. The receiving water from this Site is Elizabeth Run and associated wetlands and unnamed tributaries ("UNTs") thereto, which flow into the Little Swatara Creek and are classified as a Warm Water Fishery ("WWF") in section 93.9o of the Pennsylvania Code, 25 Pa. Code § 93.9o. Some of the associated wetlands are Exceptional Value Water under 25 Pa. Code § 93.4b(b).
- I. The Lebanon County Conservation Districts ("LCCD") and the Department performed an on-site inspection of the activities on the Site. The LCCD and Department documented the following conditions and violations during these on-site inspections:
 - 1. Inspections by the LCCD on April 17, 2014, May 8, 2014, and June 17, 2014 determined that FSWA, Steckbeck, and Joao did not implement effective Best Management Practices to effectively minimize accelerated erosion and sedimentation at the Site. Failure to implement erosion and sedimentation control Best Management Practices to effectively minimize accelerated erosion and sedimentation is a violation of 25 Pa. Code §102.4, and Section 402 of The Clean Streams Law, 35 P.S. § 691.402 and constitutes unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611.
 - 2. Inspections by the LCCD on April 17, 2014, May 8, 2014, and June 17, 2014 determined that FSWA, Steckbeck, and Joao did not maintain effective Best Management Practices to effectively minimize accelerated erosion and sedimentation at the Site. Failure to maintain erosion and sedimentation control Best Management Practices to effectively minimize accelerated erosion and sedimentation is a violation of 25 Pa. Code §102.4, and Section 402 of The Clean Streams Law, 35 P.S. § 691.402 and constitutes unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611.
 - 3. Inspections by the LCCD on April 17, 2014, May 8, 2014, and June 17, 2014 determined that FSWA, Steckbeck, and Joao conducted earth disturbance activities at the Site in a manner contrary to the Standard Conditions contained in National Pollutant Discharge Elimination System (NPDES) Permit Numbers PAG02-0038-12-005 and PAG02-0038-09-018 ("Permits") that created a danger of sediment pollution to Elizabeth Run and associated wetlands and unnamed tributaries ("UNTs") thereto, which are waters of the Commonwealth. Failing to comply with permit condition and creating a danger of sediment pollution to waters of the Commonwealth constitutes unlawful conduct and a nuisance under Section 402 of The Clean Streams Law, 35 P.S. § 691.402.

4. Inspections by the Department on April 15, 2014 and the LCCD on April 17, 2014 determined that FSWA, Steckbeck, and Joao caused or allowed accelerated erosion and resulting sedimentation from earth disturbance activity at the Site to enter Elizabeth Run and associated wetlands and UNTs thereto, which are waters of the Commonwealth. Causing or allowing accelerated erosion and resulting sedimentation into waters of the Commonwealth by earth disturbance activities constitutes unlawful conduct under Section 401 of The Clean Streams Law, 35 P.S. § 691.401.
 5. Inspections by the LCCD on April 17, 2014, May 8, 2014, and June 17, 2014 determined that FSWA, Steckbeck, and Joao conducted earth disturbance activities at the Site in a manner contrary to the Standard Conditions contained in the Permits. Conducting activities contrary to the terms and conditions of a permit constitutes unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611.
 6. Inspections by the LCCD on April 17, 2014, May 8, 2014, and June 17, 2014 determined that FWSA, Steckbeck, and Joao failed to permanently stabilize all areas of the Site upon completion of earth disturbance activities at the Site. Failing to stabilize all areas of sites upon completion of earth disturbance activities is a violation of 25 Pa. Code §102.22(a) and constitutes unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611.
- J. The Department performed on-site inspections of the activities on the Site. The Department documented the following conditions and violations during these on-site inspections:
1. Inspections by the Department on April 15, 2014, May 8, 2014, and June 17, 2014 determined that FWSA, Steckbeck, and Joao installed a new sanitary sewer line in five separate wetlands (including Exceptional Value wetlands) without obtaining a Water Obstruction and Encroachment Permit. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. §693.6(a), 25 Pa. Code §105.11(a) and constitutes unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.
 2. Inspections by the Department on April 15, 2014, May 8, 2014, and June 17, 2014 determined that FSWA, Steckbeck, and Joao excavated and conducted earth disturbance activities within the floodway of Elizabeth Run without obtaining a Water Obstruction and Encroachment Permit for either activity. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code §105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.

3. Inspections by the Department on April 15, 2014, May 8, 2014, and June 17, 2014 determined that FSWA, Steckbeck, and Joao excavated an unnamed tributary ("UNT") to Elizabeth Run without obtaining a Water Obstruction and Encroachment Permit. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code §105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.
4. Inspections by the Department on April 15, 2014, May 8, 2014, and June 17, 2014 determined that FSWA, and Steckbeck installed an outfall in Exceptional Value wetlands without obtaining a Water Obstruction and Encroachment Permit. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code §105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.
5. Inspections by the Department on April 15, 2014, May 8, 2014, and June 17, 2014 determined that FSWA, Steckbeck, and Joao placed fill in three separate wetlands, including exceptional value wetlands, without obtaining a Water Obstruction and Encroachment Permit. Some of the associated wetlands that were filled are Exception Value Water under 25 Pa. Code § 93.4b(b). Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code §105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.
6. Inspections by the Department on April 15, 2014, May 8, 2014, and June 17, 2014 determined that FSWA, Steckbeck, and Joao installed stream bank stabilization along Elizabeth Run without obtaining a Water Obstruction and Encroachment Permit. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code §105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.

7. Inspections by the Department on April 15, 2014, May 8, 2014, and June 17, 2014 determined that FSWA, Steckbeck, and Joao installed four stream crossings in UNTs to Elizabeth Run without obtaining a Water Obstruction and Encroachment Permit. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code §105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.
 8. Inspections by the Department on April 15, 2014, May 8, 2014, and June 17, 2014 determined that FSWA, Steckbeck, and Joao installed a new sanitary sewer line in an UNT to Elizabeth Run without obtaining a Water Obstruction and Encroachment Permit. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code §105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.
- K. The Department received a plan from Steckbeck on September 23, 2014 entitled "*Restoration Plan for South Fredericksburg Sewer,*" sheets 1-11 ("Plan"), which documented activities completed on the Site by FWSA, Steckbeck, and Joao. The Department documented the following additional violations during the review of the Plans.
1. FWSA, Steckbeck, and Joao installed a new water line in a wetland associated with Deep Run without obtaining a Water Obstruction and Encroachment Permit. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code § 105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.
 2. FWSA, Steckbeck, and Joao installed a new water line in three separate wetlands, including exceptional value wetlands associated with Elizabeth Run without obtaining a Water Obstruction and Encroachment Permit. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code §105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.

3. FSWA, Steckbeck, and Joao installed a new water line in Deep Run without obtaining a Water Obstruction and Encroachment Permit. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code § 105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.
4. FSWA, Steckbeck, and Joao installed a new water line in Beach Run without obtaining a Water Obstruction and Encroachment Permit. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code §105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.
5. FSWA, Steckbeck, and Joao installed four new water lines in UNTs to Elizabeth Run without obtaining a Water Obstruction and Encroachment Permit. Failing to obtain a permit is a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), 25 Pa. Code §105.11(a) and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18. Construction, operation, or maintenance of a water obstruction or encroachment without a permit, is a violation of the Dam Safety and Encroachments Act, 32 P.S. § 693.6.
- L. The violations described in paragraphs I.1. through I.6. above, constitute unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611 and subjects FSWA, Steckbeck, and Joao to a claim for civil penalties under Section 605 of The Clean Streams Law, 35 P.S. § 691.605. The violations described in paragraphs J.1. through J.8. and K.1 through K.5 above, constitute unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18, and subjects FSWA, Steckbeck, and Joao to a claim of civil penalty under Section 21 of the Dam Safety and Encroachments Act, 32 P.S. § 693.21.

ORDER

After full and complete negotiation of all matters set forth in this COA 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 FSWA, Steckbeck, and Joao as follows:

1. **Authority.** This COA is an Order of the Department authorized and issued pursuant to Sections 5 and 610 of The Clean Streams Law, 35 P.S. §§ 691.5, 691.610; Section 1917-A of the Administrative Code, *supra.*, and Sections 20 and 21 of The Dam Safety and Encroachments Act 32 P.S. §§ 693.20 and 693.21.

2. Findings.

- a. FSWA, Steckbeck, and Joao agree that the findings in paragraphs A. through L. are true and correct and, in any matter or proceeding involving FSWA, Steckbeck, and Joao and the Department, FSWA, Steckbeck, and Joao shall not challenge the accuracy or validity of these findings.
- b. The parties do not authorize any other persons to use the findings in the COA in any matter or proceeding.

3. Corrective Actions.

- a. On or before December 8, 2014, unless the Department approves a later date in writing, FSWA, Steckbeck, and Joao shall complete the three culvert replacements along Center Street as per the approval granted by the Department on November 5, 2014.
- b. On or before December 8, 2014, unless the Department approves a later date in writing, FSWA, Steckbeck, and Joao shall submit a Chapter 105 Water Obstructions and Encroachment General Permit Registration BWEW-GP-11 to the Department for review and approval for the following previously unauthorized activities described in paragraphs J. and K., above:
 1. sanitary sewer line crossings of streams and wetlands,
 2. water line crossings of streams and wetlands,
 3. stream crossings (minor road crossing),
 4. outfall structure in wetlands,
 5. stream bank stabilization.
- c. On or before December 8, 2014, unless the Department approves a later date in writing, FSWA, Steckbeck, and Joao shall submit a restoration plan for the access road/steep slopes along Elizabeth Run ("Restoration Plan") to the Department for review and approval.
- d. On or before June 30, 2015, unless the Department approves a later date in writing, FSWA, Steckbeck, and Joao shall implement the Restoration Plan as approved by the Department.
- e. In the event the Department determines that additional information, revisions, modifications, or amendments to the Plans are necessary, or that modifications to restoration work required by this Order are required, then within seven days after receipt of written notice, FSWA, Steckbeck, and Joao shall submit to the Department such information, revisions, modifications, or amendments, or complete the modified work, unless an alternative timeframe is approved by the Department in writing.

4. **Civil Penalty Assessment and 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 22 of The Dam Safety and Encroachments Act, 32 P.S. §693.21, the Department hereby assesses a civil penalty of THIRTEEN THOUSAND DOLLARS (\$13,000.00) under the Clean Streams Law, and SIXTY TWO THOUSAND DOLLARS (\$62,000.00) under the Dam Safety and Encroachments Act, both of which FSWA, Steckbeck, and Joao hereby agrees to pay.

Upon signing this COA, FSWA, Steckbeck, and Joao jointly and severally shall pay the civil penalty of THIRTEEN THOUSAND DOLLARS (\$13,000.00). This payment is in settlement of the Department's claim for civil penalties for the violations of The Clean Streams Law set forth in paragraphs I. (1-6) herein, covering the period from April 15, 2014 to the date of execution of this COA. The payment shall be by corporate check or the like, made payable to the "**Commonwealth of Pennsylvania, Clean Water Fund**" and sent c/o Ronald C. Eberts, Jr., Environmental Protection Compliance Specialist, DEP Waterways and Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

Upon signing this COA, FSWA, Steckbeck, and Joao jointly and severally shall pay the civil penalty of SIXTY TWO THOUSAND DOLLARS (\$62,000.00). This payment is in settlement of the Department's claim for civil penalties for the violations of the Dam Safety and Encroachments Act set forth in paragraph J. (1-8) and K. (1-5) herein, covering the period from April 15, 2014 to the date of execution of this COA. The payment shall be made by corporate check or the like, made payable to the "**Commonwealth of Pennsylvania – Dams and Encroachments Fund**", and sent c/o Ronald C. Eberts, Jr., Environmental Protection Compliance Specialist, DEP Waterways and Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

5. **Stipulated Civil Penalties.**

- a. In the event FSWA, Steckbeck, and Joao fails to comply in a timely manner with the provisions of this COA, FSWA, Steckbeck, and Joao shall be in violation of this COA and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100 per day for each violation.
- b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded in the following manner: Stipulated civil penalty payments shall be made payable to "**Commonwealth of Pennsylvania – Dams and Encroachments Fund**", and forwarded to PA DEP, Southcentral Regional Office, Watershed Management Program, attn: Ronald C. Eberts, Jr., 909 Elmerton Ave., Harrisburg, Pa 17110-8200.
- c. Any payment under this paragraph shall neither waive FSWA, Steckbeck, and Joao's duties to meet its obligations under this COA, nor preclude the Department from commencing an action to compel FSWA, Steckbeck, and Joao's compliance with the terms and conditions of this COA. The payment resolves FSWA, Steckbeck, and Joao's liability only for civil penalties arising from the violation of this COA for which the payment is made.

6. Additional Remedies.

- a. In the event FSWA, Steckbeck, and Joao fail to comply with any provision of this COA, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including any action to enforce this COA.
- b. The remedies provided by this paragraph and paragraph 5 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.

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

8. Liability of Operator. FSWA, Steckbeck, and Joao shall be liable for any violations of the COA, including those caused by, contributed to, or allowed by its officers, agents, employees or contractors. Except as provided in paragraph 7, FSWA, Steckbeck, and Joao also shall be liable for any violation of this COA caused by, contributed to, or allowed by its successors and assigns.

9. Transfer of Site.

- a. The duties and obligations under this COA 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 FSWA, Steckbeck, and Joao intend to transfer any legal or equitable interest in the Site which is affected by this COA, FSWA, Steckbeck, and Joao shall serve a copy of this COA upon the prospective transferee of the legal and equitable interest at least 30 days prior to contemplated transfer and shall simultaneously inform the Department's Southcentral Regional Office of such intent.
- c. The Department in its sole discretion may agree to modify or terminate FSWA, Steckbeck, and Joao's duties and obligations under this COA upon transfer of the Site. FSWA, Steckbeck, and Joao 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 COA shall be addressed to:

Ronald C. Eberts Jr.
Environmental Protection Compliance Specialist
DEP, Southcentral Regional Office
909 Elmerton Avenue
Harrisburg, PA 17110-8200

11. **Correspondence with FSWA.** All correspondence with FSWA concerning this COA shall be addressed to:

Mr. James Heisey
Fredericksburg Sewer and Water Authority
113 East Main Street
Fredericksburg, PA 17026

12. **Correspondence with Steckbeck.** All correspondence with Steckbeck concerning this COA shall be addressed to:

Mr. Jeffrey D. Steckbeck
Steckbeck Engineering and Surveying, Inc.
279 North Zinns Road, Suite A
Lebanon, PA 17042

13. **Correspondence with Joao.** All correspondence with Joao concerning this COA shall be addressed to:

Mr. Carlos Lameira
Joao and Bradley Construction Company
4211 Tracy Lane
Bethlehem, PA 18020

FSWA, Steckbeck, and Joao 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 COA, including its enforcement, may be made by mailing a copy by first class mail to the above address.

14. **Force Majeure.**


- a. In the event that FSWA, Steckbeck, and Joao are prevented from complying in a timely manner with any time limit imposed on this COA solely because of a strike, fire, flood, act of God, or other circumstances entirely beyond FSWA, Steckbeck, and Joao's control and which FSWA, Steckbeck, and Joao, by the exercise of all reasonable diligence, is unable to prevent, then FSWA, Steckbeck, and Joao may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this COA shall not constitute circumstances beyond FSWA, Steckbeck, and Joao's control. FSWA, Steckbeck, and Joao's economic inability to comply with any of the obligations of this COA shall not be grounds for any extension of time.
- b. FSWA, Steckbeck, and Joao shall only be entitled to the benefits of this paragraph if it notifies the Department within five working days by telephone and within ten working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by FSWA, Steckbeck, and Joao to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten working days of its submission. FSWA, Steckbeck, and Joao'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.

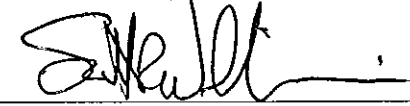
- c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by FSWA, Steckbeck, and Joao and other information available to the Department. In any subsequent litigation, the operator shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.
15. **Severability.** The paragraphs of this COA 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.
16. **Decisions Under Consent Order.** Except for a decision under paragraph 3(c), any decision which the Department makes under the provisions of this COA, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 102.2(2), nor an adjudication under 2 Pa. C.S. § 101. Any objection which FSWA, Steckbeck, and Joao may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.
17. **Entire Agreement.** This COA 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.
18. **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 COA.
19. **Modifications.** Except as provided in paragraphs 3 and 14, no changes, additions, modifications, or amendments of this COA shall be effective unless they are set out in writing and signed by the parties hereto.
20. **Titles.** A title used at the beginning of any paragraph of this COA is provided solely for the purpose of identification and shall not be used to interpret that paragraph.
21. **Termination.** Paragraphs 5 and 9 of this COA shall terminate when FSWA, Steckbeck, and Joao has completed the work required in paragraph 3, above, and paid any stipulated civil penalties due, under paragraph 5, above.

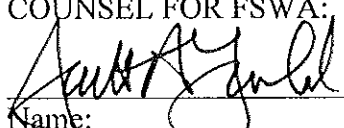
IN WITNESS WHEREOF, the parties hereto have caused this COA to be executed by their duly authorized representatives. The undersigned representatives of FSWA, Steckbeck, and Joao certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this COA on behalf of FSWA, Steckbeck, and Joao; that FSWA, Steckbeck, and Joao's consent to the entry of this COA and the foregoing Findings as an ORDER of the Department; and that FSWA, Steckbeck, and Joao hereby knowingly waives its rights to appeal this COA and the foregoing Findings, 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 FSWA, Steckbeck, and Joao's attorney, if applicable, certifies only that this COA has been signed after consulting with legal counsel.

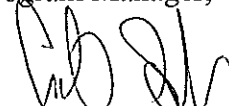
FOR FREDERICKSBURG SEWER
AND WATER AUTHORITY:

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION:

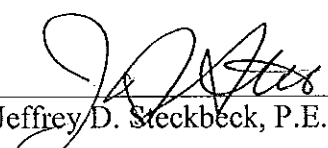

James Heisey
Date 12/3/14


Scott R. Williamson
Date 12/8/14
Program Manager, Waterways and Wetlands Program

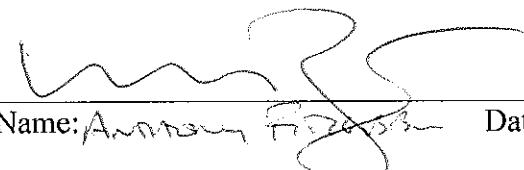
COUNSEL FOR FSWA:

Name: Curtis Sullivan
Date 12/4/14


Curtis Sullivan, Esq.
Date 12/8/14
Assistant Counsel

FOR STECKBECK ENGINEERING
AND SURVERYING, INC.:


Jeffrey D. Steckbeck, P.E.
Date 12-3-14

COUNSEL FOR STECKBECK:


Name: Anthony Frazzetta
Date 12/3/14

FOR JOAO AND BRADLEY
CONSTRUCTION COMPANY:

Carlos Lameira
Date

COUNSEL FOR JOAO:


Name: _____
Date

IN WITNESS WHEREOF, the parties hereto have caused this COA to be executed by their duly authorized representatives. The undersigned representatives of FSWA, Steckbeck, and Joao certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this COA on behalf of FSWA, Steckbeck, and Joao; that FSWA, Steckbeck, and Joao's consent to the entry of this COA and the foregoing Findings as an ORDER of the Department; and that FSWA, Steckbeck, and Joao hereby knowingly waives its rights to appeal this COA and the foregoing Findings, 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 FSWA, Steckbeck, and Joao's attorney, if applicable, certifies only that this COA has been signed after consulting with legal counsel.

FOR FREDERICKSBURG SEWER
AND WATER AUTHORITY:

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION:

James Heisey Date

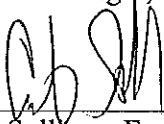
 12/8/14

Date

Scott R. Williamson
Program Manager, Waterways and Wetlands Program

COUNSEL FOR FSWA:

Name: Date

 12/8/14

Date

Curtis Sullivan, Esq.
Assistant Counsel

FOR STECKBECK ENGINEERING
AND SURVERYING, INC.:

Jeffrey D. Steckbeck, P.E. Date

COUNSEL FOR STECKBECK:

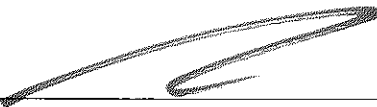
Name: Date

FOR JOAO AND BRADLEY
CONSTRUCTION COMPANY:

 12/2/14

Carlos Lameira Date

COUNSEL FOR JOAO:

 12/2/14

Name: Date

Steven N. Gaudsoutan