

JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United States of America and Pennsylvania Department of Environmental Protection

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Donna Duer, Trial Attorney, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044 202-514-3475 see attachment

**DEFENDANTS**

City of Lancaster, Pennsylvania

County of Residence of First Listed Defendant Lancaster

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Fredric P. Andes, Barnes & Thornburg, One N. Wacker Drive Chicago, IL 60606 312-214-8310

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify) \_\_\_\_\_
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Clean Water Act, (CWA) 33 U.S.C. 1201 et seq.

Brief description of cause:

Claims under CWA, 33 U.S.C. 1319(d), for violation of NPDES permit requirements.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

12/19/17

SIGNATURE OF ATTORNEY OF RECORD

Donna Duer

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

Attachment to Civil Cover Sheet

***United States and Commonwealth of Pennsylvania Department of  
Environmental Protection v. City of Lancaster, Pennsylvania***

Plaintiff's Attorneys:

Nels J. Taber

Regional Counsel

Department of Environmental Protection

Office of Chief Counsel

909 Elmerton Avenue

Harrisburg, PA 17110-8200

717-705-4817

PA Supreme Court I.D. No. 44486

[ntaber@pa.gov](mailto:ntaber@pa.gov)

Janna E. Williams

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909 Elmerton Avenue

Harrisburg, PA 17110-8200

717-705-4817

PA Supreme Court I.D. No. 319584

[jannwillia@pa.gov](mailto:jannwillia@pa.gov)

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: United States of America; PA Department of Environmental Protection

Address of Defendant: City of Lancaster, Pennsylvania

Place of Accident, Incident or Transaction: City of Lancaster, Pennsylvania

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases  
(Please specify) Sections 309(b) and (d) of the Federal Clean Water Act

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify) \_\_\_\_\_

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Donna D. Duer, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 12/19/17

/s/ Donna D. Duer

Attorney-at-Law

DC Bar No. 414056

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 12/19/17

/s/ Donna D. Duer

Attorney-at-Law

DC Bar No. 414056

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

United States of America and Pennsylvania	:	
Department of Environmental Protection	:	CIVIL ACTION
	:	
v.	:	
	:	
City of Lancaster, Pennsylvania	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>12/19/17</u>	<u>/s/ Donna D. Duer</u>	<u>United States of America</u>
<b>Date</b>	<b>Attorney-at-law</b>	<b>Attorney for</b>
<u>202-514-3475</u>	<u>202-514-0097</u>	<u>Donna.Duer@usdoj.gov</u>
<b>Telephone</b>	<b>FAX Number</b>	<b>E-Mail Address</b>

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,  
and  
COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Plaintiffs,

v.

CITY OF LANCASTER, PENNSYLVANIA,

Defendant.

Civil Action No.

Judge

**COMPLAINT**

The United States of America, by authority of the Attorney General, and through the undersigned attorneys on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the Commonwealth of Pennsylvania, Department of Environmental Protection (“PADEP”), file this Complaint, and allege as follows:

**NATURE OF ACTION**

1. This is a civil action pursuant to Sections 309(b) and (d) of the Federal Clean Water Act (“Clean Water Act” or “CWA”), 33 U.S.C. §§ 1319 (b) and (d), and state law, for permanent injunctive relief and assessment of civil penalties against the City of Lancaster, Pennsylvania (“Lancaster” or “Defendant”), for violations arising from Defendant’s operation of a wastewater treatment plant, sanitary sewer system, and combined sewer, stormwater, and other wastewater collection system. The United States and PADEP allege that Defendant discharged and/or continues to discharge pollutants, including sewage, into the waters of the United States in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the conditions and limitations

of National Pollutant Discharge Elimination System (“NPDES”) permits issued to Lancaster by PADEP, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), and the Pennsylvania Clean Streams Law (“Clean Streams Law”), Act of June 22, 1937, P.S. 1937, as amended, 35 P.S. §§ 691.1-691.1001.

2. Pursuant to Section 309(e) of the Clean Water Act, when a municipality is a party to a civil action brought by the United States under Section 309 of the Clean Water Act, 33 U.S.C. 1319(e), “the State in which the municipality is located shall be joined as a party.” The Commonwealth of Pennsylvania, through the PADEP, joins in this Complaint alleging violations of the Clean Streams Law arising out of the same operative facts as are alleged in this Complaint.

3. PADEP is the agency within the Commonwealth that is charged with the duty and authority to administer and enforce, *inter alia*, the Clean Streams Law, the Act of June 22, 1937, as amended, 35 P.S. § 691.1-691.1001. PADEP is a “state water pollution control agency” and “person” as defined in Section 502(1) and (5) of the CWA, 33 U.S.C. Section 1362(1) and (5). PADEP has authority to join in this Complaint pursuant to Section 601 of the Clean Streams Law, 35 P.S. Section 691.601. PADEP alleges that Lancaster discharged and/or continues to discharge pollutants, including sewage, into waters of the Commonwealth in violation of Sections 201, 202, and 401 of the Clean Streams Law, 35 P.S. Section 691.201, 691.202, and 691.401, and the rules and regulations promulgated thereunder.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), and 28 U.S.C. §§ 1331, 1345, and 1355.

5. This Court has supplemental jurisdiction over the PADEP Commonwealth law claims alleged herein pursuant to 28 U.S.C. § 1367(a) because the Commonwealth claims are so related to the federal claims as to form part of the same case or controversy.

6. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b) and 1395(a), and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), because it is the judicial district where Defendant is located, where a substantial part of the events or omissions giving rise to the claims occurred, and where the alleged violations occurred.

#### **NOTICE AND AUTHORITY**

7. Authority to bring this action is vested in the Attorney General of the United States under Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519. As a signatory to this Complaint, PADEP has notice of the commencement of this action, as required by Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b).

#### **DEFENDANT**

8. Defendant is a municipality located in the Commonwealth of Pennsylvania.

9. Defendant is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and Section 1 of the Clean Streams Law, 35 P.S. § 691.1, and a “municipality” within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).

10. Defendant has the power to sue and be sued. 53 Pa. C.S.A. § 5607(d)(2).

11. Defendant owns and operates a “treatment works” as that term is defined in Section 212(2) of the Clean Water Act, 33 U.S.C. § 1292(2), and a “publicly owned treatment works” (“POTW”), as that term is defined in EPA regulations implementing the CWA, 40 C.F.R. § 122.2 (cross referencing the definition at 40 C.F.R. § 403.3(q)).

**FEDERAL STATUTORY BACKGROUND**

12. The purpose of the Clean Water Act is to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The Clean Water Act establishes a national goal to eliminate the discharge of pollutants into navigable waters. 33 U.S.C. § 1251(a)(1).

13. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except, *inter alia*, as authorized by an NPDES permit issued by EPA or an authorized State pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

14. Section 502(12) of the Clean Water Act, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

15. Section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6), includes “sewage” in the definition of the term “pollutant.”

16. Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7), defines “navigable waters” to be the “waters of the United States, including the territorial seas.”

17. Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14), defines “point source” as “any discernable, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

18. Section 402(q) of the Clean Water Act, 33 U.S.C. § 1342(q), provides that each permit, order, or decree issued after December 21, 2000, for discharges from a municipal combined sewer system shall conform to EPA’s Combined Sewer Overflow Control Policy (“CSO Policy”), 59 Fed. Reg. 18688 (April 19, 1994).



19. Section 402(a) of the Clean Water Act, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue NPDES permits to authorize the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such permits.

20. Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b), provides that a state may establish its own permit program, and after receiving EPA's authorization of that program, may issue NPDES permits within its jurisdiction.

21. At all times relevant to this Complaint, the Commonwealth, through PADEP, has been authorized by the Administrator of EPA to issue NPDES permits in Pennsylvania, and it does so in accordance with its Clean Streams Law, 35 P.S. section 691.1 *et seq.* On July 1, 1978, EPA authorized PADEP to administer an NPDES program.

22. EPA retains concurrent enforcement authority pursuant to Section 402(i) of the Clean Water Act, 33 U.S.C. § 1342(i).

23. 40 C.F.R. Parts 122-125 codify the regulatory requirements for the NPDES program.

24. 40 C.F.R. Section 122.41 sets forth specific conditions applicable to all NPDES permits.

25. Combined sewer systems ("CSS") are wastewater collection systems owned by a State or municipality designed to carry sanitary sewage (domestic, commercial and industrial wastewaters) and storm water (surface drainage from rainfall or snowmelt) through a single pipe to a POTW. CSO Policy, 59 Fed. Reg. at 18689 (April 19, 1994). In periods of rainfall or snowmelt, total wastewater flows can exceed the capacity of the CSS and overflow directly to surface water bodies, such as lakes and creeks. These overflows are called combined sewer overflows ("CSOs"). CSO Policy, 59 Fed. Reg. at 8691-94 (April 19, 1994).

26. The CSO Policy defines a CSO as the discharge from a combined sewer system at a point prior to the sewage treatment plant that consists of mixtures of domestic sewage, industrial and commercial wastewaters, and storm water runoff. 59 Fed. Reg. 18691-94 (April 19, 1994).

27. The CSO Policy requires the submission of a “Long Term Control Plan” (“LTCP”) to describe how the POTW will minimize or prevent CSOs and achieve compliance with the Clean Water Act. *Id.*

28. Section II.C.4 of the CSO Policy requires, among other things, that the LTCP evaluate controls that would be necessary to achieve a range of overflow events per year, including zero overflow events per year or up to 100% capture, by making a reasonable assessment of cost and performance, sufficient to meet Clean Water Act requirements. *Id.*

29. Section II.C.4 of the CSO Policy also requires, among other things, that the LTCP consider expansion of POTW secondary and primary capacity in the CSO abatement alternative analysis. *Id.*

30. Section II.C.5 of the CSO Policy requires that Defendant’s LTCP include cost/performance curves to demonstrate the relationships among the range of alternatives required under Section II.C.4 to determine where the increment of pollution reduction achieved diminishes compared to the increased cost (a.k.a. “knee of the curve analysis”). *Id.*

31. The CSO Policy requires permittees with CSOs to implement the Nine Minimum Controls (“NMCs”), which are technology-based actions designed to reduce CSOs and their effects on receiving water quality. *Id.*

32. Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), authorizes the Administrator of EPA to commence a civil action to obtain appropriate relief, including a

permanent or temporary injunction, when any person discharges without a permit in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

33. Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4 establish maximum civil penalties for violations of the Clean Water Act, including violations of any condition or limitation in a permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342. The maximum civil penalty per day per violation of the Clean Water Act is \$37,500 for violations occurring on or before November 2, 2015, and \$51,570 per day per violation of the Clean Water Act for violations occurring after November 2, 2015. See Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701.

#### **PENNSYLVANIA STATUTORY BACKGROUND**

34. Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202, prohibit the discharge of sewage by any person or municipality into any waters of the Commonwealth except in compliance with a permit issued under Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

35. Section 92a.2 of the PADEP's regulations, 25 Pa. Code 92a.2, defines "discharge" as "an addition of any pollutant to surface waters of this Commonwealth from a point source."

36. Section 92a.2 of the PADEP's regulations, 25 Pa. Code 92a.2, defines "pollutant" as "a contaminant or other alteration of the physical, chemical, biological or radiological

integrity of surface water that causes or has the potential to cause pollution as defined in section 1 of the State Act (35 P. S. § 691.1).”

37. Section 1 of the Clean Streams Law, 35 P.S. 691.1, states that “sewage” “shall be construed to include any substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals.”

38. Section 1 of the Clean Streams Law, 35 P.S. 691.1, states that “[w]aters of the Commonwealth” “shall be construed to include any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.”

39. Section 92.5 of the PADEP’s regulations, 25 Pa. Code § 92.5, provides that an NPDES Permit satisfies the permit requirement of Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

40. Section 601 of the Clean Streams Law, 35 P.S. § 691.601, provides in pertinent part:

- (a) Any activity or condition declared by this act to be a nuisance or which is otherwise in violation of this act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

41. Section 611 of the Pennsylvania Clean Streams Law, 35 P.S. § 691.611, provides in pertinent part:

It shall be unlawful to fail to comply with any rule or regulation of the department or to fail to comply with any order or permit or licenses of the department, to violate any of the provisions of this act or rules and regulations adopted hereunder, or any order or permit or licenses of the department, to cause air or water pollution, or to hinder, obstruct, prevent or interfere with the department or its personnel in the performance of any duty hereunder or to violate the provisions of 18 Pa. C.S. Section 4903 (relating to false swearing) or 4904 (relating to unsworn falsifications to authorities).

Any person or municipality engaging in such conduct shall be subject to the provisions of Sections 601, 602, and 605.

42. Section 605 of the Clean Streams Law, 35 P.S. § 691.605, provides in pertinent part:

In addition to proceeding under any other remedy available at law or equity for a violation of provision of this act, rule, regulations, order of the department, or condition of any permit issued pursuant to this act, the department, after hearing, may assess a civil penalty upon a person or municipality for such violation. Such a penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed ten thousand dollars (\$10,000) per day for each violation.

43. Pursuant to Section 605 of the Clean Streams Law, 35 P.S. § 691.605, the court may impose civil penalties up to \$10,000 per day for each violation.

#### **GENERAL ALLEGATIONS**

44. Defendant owns and operates a “treatment works” as that term is defined in Section 212(2) of the CWA, 33 U.S.C. § 1292, and 25 Pa. Code 92a.2, and a “publicly owned treatment works” (“POTW”) as that term is defined in EPA regulations implementing the CWA, 40 C.F.R. § 122.2 (cross-referencing the definition at 40 C.F.R. § 403.3(q)) and 25 Pa. Code 92a.2.

45. The Lancaster Advanced Wastewater Treatment Plant (“Treatment Plant”), located at 1220 New Danville Pike, Lancaster, PA 17602, is, and at all times relevant herein has been, the POTW that serves the City of Lancaster and portions of several surrounding tributary municipalities, including Manheim Township, Lancaster Township, East and West Lampeter Townships, Strasburg Borough, Strasburg Township, Upper Leacock Township, West Earl Township, Manor Township, Pequea Township, and East Hempfield Township, for a total service population of approximately 140,000 persons.

46. At all times relevant herein, Defendant has owned and operated the collection system, which consists of approximately 88 miles of combined sewer pipe and about 60 miles of separate sanitary sewer pipe, manholes, and other associated appurtenances (collectively, the “Collection System”).

47. At all times relevant herein, Defendant has owned, operated, and maintained the Treatment Plant and the Collection System (collectively, the “Combined Sewer System”).

48. Pursuant to Section 402(a) of the Clean Water Act, 33 U.S.C. § 1342(a), and Section 202 of the Clean Streams Law, 35 P.S. 691.202, PADEP issued to Lancaster NPDES Permit No. PA0026743 on October 26, 2005 (“2005 Permit”). This NPDES Permit was re-issued on July 28, 2010, and effective on August 1, 2010 (“2010 Permit”). PADEP issued an amendment to the 2010 Permit on June 18, 2012, which modified the requirement to check and clean catch basins from twice a year to “no less frequently than once per year.”

49. At all times relevant herein, Defendant has “discharged,” and continues to discharge, “pollutants” from its treatment works within the meaning of Sections 502(6) and (12) of the Clean Water Act, 33 U.S.C. §§ 1362(6) and (12), and Sections 201 and 202 of the Clean Streams Law, 35 P.S. 691.201 and 691.202, from “point sources” within the meaning of Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14), into the Conestoga River. The Conestoga River flows into the Susquehanna River, which flows into the Chesapeake Bay.

50. The Conestoga River is a “navigable water” within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7), and “water of the Commonwealth” within the meaning of Section 1 of the Clean Streams Law, 35 P.S. § 691.1

51. Sewage, commercial and industrial waste, and their constituents are “pollutants” within the meaning of Section 506(6) of the Clean Water Act, 33 U.S.C. § 1362(6), and within the meaning of “pollution” under Section 1 of the Clean Streams Law, 35 P.S. § 691.1

52. The outfalls from which Lancaster discharges are “point sources” within the meaning of Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14).

53. During certain rainfall events, the volume of wastewater entering the Combined Sewer System exceeds the hydraulic capacity of the sewers and/or the treatment facility. In those circumstances, the Collection System will discharge untreated combined sewage from certain designated outfalls, known as combined sewer outfalls.

54. When combined sewage discharges from a combined sewer outfall into a receiving water body, the event is known as a combined sewer overflow (“CSO”).

55. The combined sewer outfalls from which Lancaster discharges are “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

56. Pursuant to the CSO Policy, 59 Fed. Reg. 18689 (April 19, 1994), CSOs are point sources subject to NPDES permit requirements, including both technology-based and water quality-based requirements of the Clean Water Act.

57. The combined sewage that Defendant discharges from its combined sewer outfalls contains raw sewage and storm water runoff.

58. Discharges from a sewage treatment plant are discharges from a point source that require an NPDES permit pursuant to Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342. Discharges from a CSO discharge point are discharges from a point source that require an NPDES permit pursuant to Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

59. At all times relevant herein, Defendant's NPDES Permit has authorized the discharge of pollutants only from specified point sources (identified in the Permit as one or more numbered "outfalls") to specified waters of the United States and/or the Commonwealth, subject to limitations and conditions set forth in the NPDES Permits

60. Defendant discharges treated wastewater from the Treatment Plant through Outfall 001 to the Conestoga River. Defendant's NPDES Permit No. PA0026743 authorizes the discharge of treated wastewater from Outfall 001, provided that pollutants in the treated wastewater do not exceed specific effluent limitations set forth in the NPDES Permit.

61. Defendant's NPDES Permit No. PA0026743 also authorizes discharges of combined sewage from five diversion chambers, identified as Outfalls 002, 003, 004, 005, and 006.

62. Part C.V.B.1.d of Defendant's NPDES Permit No. PA0026743 also authorizes a CSO-related bypass from CSO 100 during specific conditions specified in the Permit. This permitted bypass allows Defendant to discharge disinfected primary effluent, after it combines with the fully treated wastewater from the rest of the Treatment Plant, directly into the Conestoga River from Outfall 001.

**FIRST CLAIM FOR RELIEF**  
**(Failure to Develop and Implement an Adequate Long Term Control Plan)**

63. The allegations of the foregoing Paragraphs are realleged and incorporated herein by reference.

64. EPA's CSO Policy requires the submission of a "Long Term Control Plan" to describe how the POTW will minimize or prevent CSOs. CSO Policy, 59 Fed. Reg. 18691-94 (April 19, 1994).



65. Part C.III.B of 2005 NPDES Permit and Part C.V.B. of Defendant's 2010 NPDES Permit required, *inter alia*, that Defendant develop and implement a water quality based Long Term Control Plan.

66. In 1998, Lancaster submitted a Long Term Control Plan to EPA and PADEP.

67. On September 5, 2008, EPA issued an Administrative Order and Information Request to Defendant pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318.

68. Since at least September 5, 2008, Defendant's Long Term Control Plan has failed to meet the requirements of Defendant's NPDES Permit and the CSO Policy.

69. Defendant responded to EPA on October 6, 2008, October 7, 2008, and January 13, 2009.

70. On July 9, 2009, Defendant submitted to EPA an Amended Long Term Control Plan.

71. On April 28, 2010, EPA notified Lancaster that its July 9, 2009 Amended Long Term Control Plan was deficient because, *inter alia*, Defendant failed to include documentation of consideration of sensitive areas, failed to include evaluation of alternatives, did not discuss cost/performance considerations, did not demonstrate that Defendant is maximizing treatment at the existing treatment plant, and failed to include an implementation schedule and milestones for LTCP projects.

72. Defendant's failure to develop and implement an adequate Long Term Control Plan constitutes a violation of its NPDES Permits and Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

73. Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), provide that any person who violates any condition or limitation which implements Section 301 of the CWA,

including permit conditions and limitations, shall be subject to injunctive relief and a civil penalty. Defendant is also subject to injunctive relief under the Clean Streams Law, 35 P.S. §§ 691.3, 691.601, 691.611, and civil penalties under Section 605, 35 P.S. § 691.605. Each day that Lancaster fails to develop and implement an adequate Long Term Control Plan in violation of its NPDES Permit constitutes a separate violation of its NPDES Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a), and Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

74. Unless enjoined by an order of the Court, Defendant will continue to violate its 2010 NPDES Permit, and therefore Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and Section 202 of the Clean Streams Law, 35 P.S. § 691.202, by failing to develop and implement a Long Term Control Plan consistent with the requirements of its NPDES Permit and Section 402(q) of the Clean Water Act.

75. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, Defendant is liable for civil penalties of up to \$37,500 per day per violation occurring on or after January 12, 2009, and \$51,570 per day per violation occurring on and after November 2, 2015. 40 C.F.R. § 19.4. Defendant is also subject to civil penalties up to \$10,000 per day per violation under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

**SECOND CLAIM FOR RELIEF**  
**(Effluent Limitation Violations – Outfall 001)**

76. The allegations of the foregoing Paragraphs are realleged and incorporated herein by reference.

77. Defendant's NPDES Permit authorizes it to discharge pollutants from a single Treatment Plant point identified as Outfall 001, as specified in Part A, Section I.A., of Defendant's 2005 and 2010 NPDES Permits. Discharges from Outfall 001 are subject to effluent

limitations that prohibit discharges of specified pollutants in excess of numeric monthly and weekly average mass unit limits, as well as numeric monthly and weekly average concentration limits.

78. On numerous occasions since at least April 2009, Defendant discharged wastewater containing pollutants from Outfall 001 in violation of the effluent limitations contained in the 2005 and 2010 NPDES Permits.

79. Defendant submitted discharge monitoring reports (“DMRs”) to report the effluent limit violations from Outfall 001. Defendant certified to the accuracy of the information reported in the DMRs.

80. Appendix A, incorporated herein by reference, provides a table of currently known occasions on which Defendant discharged pollutants from the Treatment Plant at concentrations that violated the NPDES Permits.

81. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as authorized by a NPDES permit issued by EPA or an authorized State pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

82. The receiving waters for Defendant’s discharges in excess of effluent limitations contained in its applicable NPDES Permit constitute “waters of the Commonwealth” within the meaning of Section 1 of the Clean Steams Law, 35 P.S. § 691.1, and waters of the United States that are “navigable waters” within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7).

83. Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), provide that any person who violates any condition or limitation which implements Section 301 of the CWA, including permit conditions and limitations, shall be subject to injunctive relief and a civil

penalty. Defendant is also subject to injunctive relief under the Clean Streams Law, 35 P.S. §§ 691.3, 691.601, 691.611, and civil penalties under Section 605, 35 P.S. § 691.605. Each day that Lancaster discharges wastewater containing pollutants from Outfall 001 in violation of the effluent limits contained in its NPDES Permits constitutes a separate violation of a permit condition or limitation and each discharge is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

84. Unless enjoined by an order of the Court, Defendant will continue to discharge pollutants in excess of its effluent limitations for Outfall 001 in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

85. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, Defendant is liable for civil penalties of up to \$37,500 per day per violation occurring on or after January 12, 2009, and \$51,570 per day per violation occurring on and after November 2, 2015. 40 C.F.R. § 19.4. Defendant is also subject to civil penalties of up to \$10,000 per day per violation under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

**THIRD CLAIM FOR RELIEF**  
**(Violation of NPDES Permit by Failing to Implement the Nine Minimum Controls)**

86. The allegations of the foregoing Paragraphs are realleged and incorporated herein by reference.

87. Part III.A and E of Defendant's 2005 NPDES Permit required it to implement the Nine Minimum Control measures from EPA's Guidance for Nine Minimum Controls. The NMCs are best management practices that serve as technology-based effluent limits in permits that authorize discharges from CSOs.

88. The Nine Minimum Controls are technology-based requirements and include the following:

- a) (#1) Proper operation and regular maintenance programs for the sewer system and CSO outfalls;
- b) (#2) Maximum use of storage in collection systems;
- c) (#3) Review and modification of pretreatment requirements to ensure that CSO impacts are minimized;
- d) (#4) Maximization of flow to the POTW for treatment;
- e) (#5) Elimination of CSOs during dry weather;
- f) (#6) Control of solid and floatable materials in CSOs;
- g) (#7) Pollution prevention programs to reduce contaminants in CSOs;
- h) (#8) Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts; and
- i) (#9) Monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

89. Part V.A of Defendant's 2010 NPDES Permit requires that the "permittee shall continue implementation of the Nine Minimum Controls (NMCs), [and] demonstrate system wide compliance with the NMCs," and that "[PADEP] will use the EPA guidance document entitled 'Guidance for Nine Minimum Controls' (EPA 832-B – 95-003), dated May 1995, and specific comments provided during review of the NMCs documentation reports to determine continued compliance with the CSO permit requirements."

90. Since at least September 2011, Defendant has violated its NPDES Permit conditions requiring implementation of the Nine Minimum Controls as identified herein.

91. Since at least September 2011, Defendant has violated the requirement to have proper operation and regular maintenance programs for the sewer system and CSOs (Nine Minimum Control #1) for reasons including, but not limited to, the following:

- a) Failure to review and modify appropriately the CSO Operations Manual;
- b) Failure to maintain list of facilities critical to performance of the CSS and Treatment Plant;
- c) Failure of Standard Operating Procedures to: (1) specifically reference process control variables (e.g. flow rates, oxygen system set points, number of units to be online) and/or the levels and units of those variables that require actions to ensure

- that systems and process units are maximized; (2) specify the information that should be referenced to determine the appropriate amount of return, waste, dissolved oxygen, sampling, and chlorine/dechlorination doses; (3) provide process control ranges to be expected for sludge or solids, and failed to provide the optimal range for general dry weather flows, or settings or ranges for wet weather events; (4) contain operational protocols concerning issues with solids in the North Treatment Train, North Pump Station, Stevens Avenue Pump Station, and Engleside Pump Station, associated with the lack of grit removal capability.
- d) Failure to have formal training manuals or comprehensive records of formal training for employees for collection system and CSO maintenance;
  - e) Failure to have a structured preventive maintenance program for cleaning the collection system. Failure to identify the amount of sewer lines cleaned on a regular schedule and failure to incorporate an annual cycle that would incorporate cleaning of the entire system within a scheduled timeframe (such as a 10-year cycle).
  - f) Failure to have sufficient documentation of maintenance or inspection activities conducted in the collection system. Lack of written SOPs for conducting or documenting maintenance or inspection activities in the collection system.
  - g) Failure to maintain records of inspection progress and to develop a program for recording complaints from the public of backups, blockages, sewer overflows, CSOs, and spills, and failure to document responses to such complaints.

92. Since at least September 2011, Defendant has violated the requirement to maximize use of the collection system for storage (Nine Minimum Control #2) for reasons including, but not limited to, the following:

- a) Failure to take adequate steps to control the accumulation of debris, grit, and sediment in the combined sewer system, limiting the use of the system for storage of combined sewage.
- b) Failure to eliminate the discharge of groundwater from the Lancaster School District that goes to the North Pump Station, which would increase storage in the Defendant's collection system.

93. Since at least September 2011, Defendant has violated the requirement to review and modify pretreatment requirements to assure CSO impacts are minimized (Nine Minimum Control #3) for reasons including, but not limited to, failure to establish a system of oversight of significant industrial users to modify their flows during wet weather events.

94. Since at least September 2011, Defendant has violated the requirement to maximize flow to the POTW for treatment (NMC #4) for reasons including, but not limited to,

failure to have a preventative maintenance program for the primary clarifiers that would maximize flows to the Treatment Plant for treatment and would reduce excessive wear from abrasive grit.

95. Since at least September 2011, Defendant has violated the requirement to eliminate CSOs during dry weather (NMC #5) for reasons including, but not limited to, failure to document development of inspection procedures for detecting and eliminating Dry Weather Overflows and for analyzing the cause of spills or overflow events.

96. Since at least September 2011, Defendant has violated the requirement to control solid and floatable materials in CSOs (NMC #6) for reasons including, but not limited to, failure to install solids and floatable controls at CSO locations.

97. Since at least September 2011, Defendant has violated the requirement to notify the public to ensure adequate notification of CSO occurrences and impacts (NMC #8) for reasons including, but not limited to, the failure to notify the public of CSO events and to post notice of CSO impacts.

98. Since at least September 2011, Defendant has violated the requirement to effectively characterize CSO impacts and efficacy of CSO controls (NMC #9) for reasons including, but not limited to, the following:

- a) Failure to use a method of monitoring overflows that provides accurate information regarding overflow volume;
- b) Failure to transmit information from flow meters to the Defendant's Supervisory Control and Data Acquisition System;
- c) Failure to have SOP to determine the impact to the environment of domestic wastewater spills and failure to have procedures for calculating spill/release volume and a timeframe for the duration of the occurrence.

99. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), any person who violates any condition or limitation which implements Section 301 of the Clean

Water Act, including permit conditions and limitations, shall be subject to injunctive relief and civil penalties. Defendant is also subject to injunctive relief under the Clean Streams Law, 35 P.S. §§ 691.3, 691.601, 691.611, and civil penalties under Section 605, 35 P.S. § 691.605. Each day that Lancaster fails to comply with the Nine Minimum Controls as required by the conditions of its NPDES Permit constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

100. Unless enjoined by an order of the Court, Defendant will continue to violate Section 301 of the CWA, 33 U.S.C. § 1311, and Section 202 of the Clean Streams Law, 35 P.S. § 691.202, by failing to comply with the conditions of its 2010 NPDES Permit regarding the Nine Minimum Controls.

101. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, Defendant is liable for civil penalties of up to \$37,500 per day per violation occurring on or after January 12, 2009, and \$51,570 per day per violation occurring on and after November 2, 2015. 40 C.F.R. § 19.4. Defendant is also subject to civil penalties up to \$10,000 per day per violation under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

**FOURTH CLAIM FOR RELIEF**  
**(Sanitary Sewer Overflows into Waters of the United States)**

102. The allegations of the foregoing Paragraphs are realleged and incorporated herein by reference.

103. Parts A, B, and C of the 2005 NPDES Permit and of the 2010 NPDES Permit authorize Defendant to discharge from locations identified in the Permits into waters of the United States.



104. The 2005 and 2010 Permits do not authorize Sanitary Sewer Overflow (“SSO”) discharges into waters of the United States.

105. Since at least March 27, 2012, Defendant had numerous SSOs, as identified on Appendix B attached hereto.

106. The receiving waters into which Defendant’s SSOs discharged constitute waters of the United States that are “navigable waters” within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7) and “waters of the Commonwealth” within the meaning of Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

107. Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202, prohibit the discharge of any pollutant by any person except as authorized by an NPDES permit issued by EPA or an authorized State pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

108. Each day of each of the SSOs identified herein violated the terms and conditions of Part C of the 2010 NPDES Permit and constitutes a separate violation of Section 301(a) of the Clean Water Act 33 U.S.C. § 1311(a) and Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

109. Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. §§ 1319(b) and (d), provide that any person who violates any condition which implements Section 301 of the CWA, including permit conditions and limitations, shall be subject to injunctive relief and a civil penalty. Defendant is also subject to injunctive relief under the Clean Streams Law, 35 P.S. §§ 691.3, 691.601, 691.611, and civil penalties under Section 605, 35 P.S. § 691.605.

110. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, Defendant is liable for civil penalties of up to \$37,500 per day per violation occurring on or after January 12, 2009, and \$51,570 per day per violation occurring on and after November 2, 2015. 40 C.F.R. § 19.4. Defendant is also subject to civil penalties of up to \$10,000 per day per violation under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

### **REQUEST FOR RELIEF**

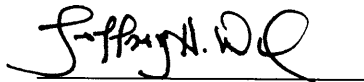
WHEREFORE, Plaintiffs respectfully request that the Court enter judgment on their behalf against Defendant as follows:

- a) A permanent injunction directing Defendant to take all steps necessary to achieve permanent and consistent compliance with the prohibition on unpermitted discharges contained in Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the Pennsylvania Clean Streams Law, 35 P.S. §§ 691.3, 691.601, 691.611;
- b) A permanent injunction directing Defendant to take all steps necessary to achieve permanent and consistent compliance with the Clean Water Act and the regulations promulgated thereunder, and all terms and conditions of its NPDES Permit;
- c) A judgment assessing civil penalties against Defendant for up to \$37,500 per day for each violation of the CWA occurring on or after January 12, 2009, and \$51,570 per day per violation occurring on and after November 2, 2015. 40 C.F.R. § 19.4, and up to \$10,000 per day for each violation, pursuant to Section 605 of the Clean Streams Law, 35 P.S. § 691.605;
- d) Award the Plaintiffs their costs in this action; and

e) Grant the United States such other and further relief as the Court deems appropriate.

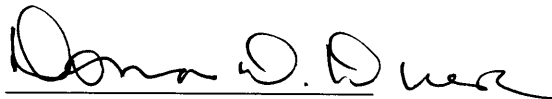
Respectfully submitted,

FOR THE UNITED STATES:



JEFFREY H. WOOD

Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice



DONNA D. DUER

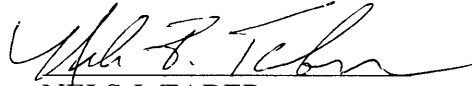
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**APPENDIX A**  
***United States and PADEP v. City of Lancaster***  
**EFFLUENT LIMITATION TABLE OF VIOLATIONS**

<b>Date</b>	<b>Parameter</b>	<b>Type of Violation</b>	<b>Reported Value</b>	<b>% Exceeded</b>	<b>Limit Value</b>
4/30/2009	Total Phosphorus	Monthly Ave	2.2 mg/L	10	2 mg/L
4/30/2009	TSS	Max Weekly Ave	87 mg/L	93	45 mg/L
4/30/2009	TSS	Monthly Ave	50 mg/L	67	30 mg/L
4/30/2009	TSS	Max Weekly Ave	14,554 lbs/d	21	12,040 lbs/d
4/30/2009	TSS	Monthly Ave	8,474 lbs/d	6	8,026 lbs/d
9/30/2009	Fecal Coliform	Geo Mean Monthly Ave	204n/100 ml	2	200n/100 ml
5/31/2010	Fecal Coliform	Geo Mean Monthly Ave	237n/100 ml	19	200n/100 ml
10/31/2010	Total Chlorine Residual	Inst Max	0.47 mg/L	12	0.42 mg/L
12/31/2010	Total Chlorine Residual	Inst Max	0.47 mg/L	12	0.42 mg/L
1/31/2011	TSS	Max Weekly Ave	77 mg/L	71	45 mg/L
1/31/2011	TSS	Monthly Ave	41 mg/L	37	30 mg/L
2/28/2011	Total Phosphorus	Monthly Ave	2.49 mg/L	25	2 mg/L
2/28/2011	TSS	Monthly Ave	42 mg/L	40	30 mg/L
2/28/2011	TSS	Max Weekly Ave	61 mg/L	36	45 mg/L
3/31/2011	Total Chlorine Residual	Inst Max	0.68 mg/L	62	0.42 mg/L
4/30/2011	Total Chlorine Residual	Inst Max	0.44 mg/L	5	0.42 mg/L
5/31/2011	Total Chlorine Residual	Inst Max	0.69 mg/L	64	0.42 mg/L
6/30/2011	Total Chlorine Residual	Inst Max	0.67 mg/L	60	0.42 mg/L
9/30/2011	Fecal Coliform	Geo Mean Monthly Ave	376n/100 ml	88	200n/100 ml
10/31/2011	Total Chlorine Residual	Inst Max	0.46 mg/L	10	0.42 mg/L
11/30/2011	Total Chlorine Residual	Inst Max	0.48 mg/L	14	0.42 mg/L

Date	Parameter	Type of Violation	Reported Value	% Exceeded	Limit Value
1/31/2012	Total Chlorine Residual	Inst Max	0.77 mg/L	83	0.42 mg/L
2/29/2012	Total Chlorine Residual	Inst Max	0.43 mg/L	2	0.42 mg/L
3/31/2012	Total Chlorine Residual	Inst Max	0.48 mg/L	14	0.42 mg/L
4/30/2012	Total Chlorine Residual	Inst Max	1.34 mg/L	219	0.42 mg/L
12/31/13	Total residue Chlorine	Inst Max	0.67 mg/L	60%	0.42 mg/L
1/31/14	TSS	Max Weekly Ave	72 mg/L	60%	45 mg/L
1/31/14	TSS	Max Weekly Ave	15,407 lbs/d	28%	12,040 lbs/d
2/28/14	TSS	Max Weekly Ave	60 mg/L	33%	45 mg/L
2/28/14	TSS	Monthly Ave	33 mg/L	10%	30 mg/L
3/31/14	TSS	Max Weekly Ave	120 mg/L	167%	45 mg/L
3/31/14	TSS	Monthly Average	44 mg/l	47%	30 mg/L
3/31/14	TSS	Max Weekly Average	24,651 lbs/d	105%	12,040 mg/L
3/31/14	TSS	Monthly Average	8,762 lbs/d	9%	8,026 lbs/d
6/30/14	Total Chlorine Residual	Inst Max	0.49 mg/L	17%	0.42 mg/L
08/31/2014	Fecal Coliform	Geo Mean Monthly Ave	221 cfu/100ml	11%	200n/100 ml
10/31/2014	Total Chlorine residual	Inst Max	0.63 mg/l	50%	0.42 mg/l
03/31/2015	TSS	Inst Max	0.48 mg/l	14%	0.42 mg/l
03/31/2015	TSS	Monthly Ave	35 mg/l	17%	0.30 mg/l
02/29/2016	TSS	Max Weekly Ave	61 mg/l	36%	0.45 mg/l
02/29/2016	TSS	Max Weekly Ave	12,466 ib/d	4%	12,040 ib/d
04/30/2016	TSS	Max Weekly Ave	70 mg/l	56%	0.45 mg/l
07/31/2016	Total Phosphorus	Monthly Ave	2.54 mg/l	27%	2 mg/l
09/30/2016	Total Phosphorus	Monthly Ave	2.41 mg/l	21%	2 mg/l

<b>Date</b>	<b>Parameter</b>	<b>Type of Violation</b>	<b>Reported Value</b>	<b>% Exceeded</b>	<b>Limit Value</b>
10/31/2016	Total Phosphorus	Monthly Ave	2.5 mg/l	25%	2 mg/l
12/31/2016	TSS	Max Weekly Ave	52 mg/l	16%	0.45 mg/l
02/28/2017	Carbonaceous	Max Weekly Ave	58 mg/l	45%	0.40 mg/l
02/28/2017	Carbonaceous	Monthly Ave	28 mg/l	12%	0.25 mg/l
02/28/2017	Total Chlorine residual	Inst Max	0.64 mg/l	52%	0.42 mg/l
02/28/17	Total Phosphorus	Monthly Ave	2.4 mg/l	20%	2 mg/l
02/28/2017	TSS	Max Weekly Ave	176 mg/l	291%	0.45 mg/l
02/28/2017	TSS	Monthly Ave	71 mg/l	137%	0.30 mg/l
02/28/2017	TSS	Max Weekly Ave	25,064 ib/d	108%	12,040 ib/d
02/28/2017	TSS	Monthly Ave	9,820 ib/d	22 %	8,026 ib/d
03/31/2017	Total Chlorine residual	Inst Max	0.75 mg/l	79%	0.42 mg/l



**APPENDIX B**  
***United States and PADEP v. City of Lancaster***  
**SANITARY SEWER OVERFLOW TABLE OF VIOLATIONS**

<b>Date</b>	<b>Cause of Spill</b>	<b>Gallons</b>	<b>Water Body Discharged</b>
March 27, 2012	Heavy grease accumulation along Columbia Avenue at Stone Mill Road	Unknown	Little Conestoga Creek
May 29, 2012	Operator error at AWTP	Unknown	Conestoga River
September 8, 2012	Mechanical failure at Steven Avenue Pump Station	200,000	Conestoga River
February 16, 2013	Electric utility problem at the Conestoga Garden Pump Station	75,000	Conestoga River
February 20, 2013	Mechanical failure at the Conestoga Garden Pump station	25,000	Conestoga River
March 26, 2013	Heavy grease accumulation along Columbia Avenue at Stone Mill Road	80,000	Little Conestoga Creek
April 4, 2013	Heavy grease accumulation along Columbia Avenue at Stone Mill Road	80,000	Little Conestoga Creek
December 3, 2013	Heavy grease accumulation along Columbia Avenue at Stone Mill Road IN 8 inch pipe	Unknown	Little Conestoga Creek
January 6, 2014	Heavy grease accumulation along Stone Mill Road	11,000	Little Conestoga Creek
January 9, 2014	North Pump Station maintenance	7,000	Conestoga River
December 10, 2014	Grit Chamber valve malfunction	Unknown	Conestoga River
March 2, 2015	City wide power outage resulting in discharge at CSO Outfall 002 at Engleside Diversion Chamber	94,000	Conestoga River
June 3, 2015	Seal water failure resulting in discharge at CSO Outfall 002 at Engleside Diversion Chamber	107,730	Conestoga River
February 25, 2017	Tripped breaker, Grofftown PS off-line	Unknown	No discharge to water body