

BOROUGH OF AVALON

RESOLUTION NO. 989

A RESOLUTION OF THE BOROUGH OF AVALON, COUNTY OF ALLEGHENY AND COMMONWEALTH OF PENNSYLVANIA AUTHORIZING THE PROPER OFFICERS OF THE BOROUGH TO EXECUTE THE ALLEGHENY COUNTY HEALTH DEPARTMENT'S ADMINISTRATIVE CONSENT ORDER; REPEALING ALL INCONSISTENT RESOLUTIONS.

WHEREAS, the Borough of Avalon was notified in November, 2003 of the Environmental Protection Agency's requirement to execute the Allegheny County Health Department's (hereinafter "ACHD"), proposed Administrative Consent Order (hereinafter "ACO"), a copy of which is attached hereto and made a part hereof as Exhibit "1," or be subject to a traditional federal enforcement action; and

WHEREAS, the Borough of Avalon is compelled to comply with the ACO of the ACHD as a result of its location within the Allegheny County Sanitary Authority (hereinafter "ALCOSAN") service area; and

WHEREAS, Borough Council of the Borough of Avalon is desirous of executing said agreement subject to enumerating certain reservations, which are set forth herein.

NOW THEREFORE, BE IT RESOLVED by Borough Council of the Borough of Avalon and it is hereby resolved with the authority of the same that:

1. **Authorization to Execute Administrative Consent Order.** The proper officers of the Borough of Avalon are hereby authorized to execute the Administrative Consent Order attached hereto between the Borough of Avalon and the Allegheny County Health Department.

2. **Denial of Certain Allegations.** The Borough of Avalon denies specifically certain allegations contained within in the ACO. Specifically, the Borough of Avalon avers:

a. **ACHD ACO Section H.** The Borough of Avalon denies that the sanitary sewer system such as the one owned and operated by the Borough was designed to convey only sanitary sewage and industrial waste. On the contrary, the Borough avers that the sanitary sewer system was originally designed and permitted to convey residential rain leaders which were approved by the Allegheny County Plumbing Inspectors.

b. **ACHD ACO Section M.** The Borough of Avalon denies specifically that it "has caused, and is causing, nuisances that are detrimental to the

public health." On the contrary, the Borough avers that it has not caused and is not causing nuisances that are detrimental to the public health.

c. **ACHD ACO Section T.** The Borough denies the ACHD allegation "that the municipality has not properly operated and maintained its sanitary sewer system." On the contrary, the Borough avers that it does properly operate and maintain its sanitary sewer system.

d. **ACHD ACO Section 14.** The Borough is willing to share any and all information relevant to its performance under this Administrative Consent Order subject to and providing that any entity requesting information from the Borough shall also share requested information with the Borough in an unrestricted reciprocal manner.

e. **ACHD ACO Sections 15.c.i and ii, 16.a., 16.b. and 16.c.** The Borough will of course cooperate with ALCOSAN in the development of a Wet Weather Plan and/or Long Term Control Plan; however, the Borough does not accept or make any representation that it will alter its current contractual relationship with ALCOSAN to establish any limits on flow.

f. The Borough agrees to dye test all public and municipal catch basins pursuant to the ACO. Moreover, pursuant to the ACO, the Borough will also attempt to require all state, private and municipal entities to comply fully with this requirement of this ACO and will take all reasonable steps necessary to require such entities to disconnect any catch basins connected to the sanitary

sewer. However, the Borough does not feel that it should accept responsibility for the actual disconnection of any such catch basins not owned by the Borough.

g. **ACHD ACO Section 26.** The Borough does not accept any liability for violations of its contractors.

3. The Borough of Avalon objects to the fact that ALCOSAN is not a signatory to the Administrative Consent Agreement.

4. Should any provision of this Consent Order be found to be invalid by a Court of Competent Jurisdiction, that provision should be stricken from this Agreement.

5. Should any other municipality, Authority, or other entity be granted any provisions more favorable than those found in this Agreement, then that provision shall be extended to, and enjoyed by the Borough of Avalon.

6. The Borough of Avalon executes this Agreement with the understanding that it shall receive a full and fair exchange of information with the Allegheny Health Department, ALCOSAN, the Pennsylvania Department of Environmental Protection, the United States Environmental Protection Agency and all other municipalities who are member ALCOSAN communities.

7. Subject to the above exceptions, the proper officers of the Borough of Avalon are authorized to execute the attached Administrative Consent Order.

8. The Municipal Solicitor of the Borough is directed to return two originals, along with a copy of the fully executed Resolution to Jeffrey M. Butia, Public Drinking Water and Waste Management, Allegheny County Health Department, 3901 Penn Avenue, Pittsburgh, Pennsylvania 15224-1318.

9. As part of this Resolution, Borough Council of the Borough of Avalon authorizes and directs that Edward Klicker, as President, and Harry W. Dilmore, as Secretary, shall be fully and completely indemnified and held harmless from any and all claims, losses or expenses that may result on account of the failure of future Borough Councils of the Borough of Avalon to fully and completely implement the requirements of the attached ACO.

10. Borough Council recognizes that individual Board members may or may not be in office when the ACO is fully implemented and it is the intent of this Resolution to provide indemnification from any and all losses or claims that may be presented to the signers of this Agreement with the ACHD that might arise on account of, or because of the failure of, future Borough Councils of the Borough of Avalon to meet the obligations of this ACO.

11. Any other Resolution or parts of Resolutions conflicting herewith be and the same are hereby repealed insofar as they conflict herewith.

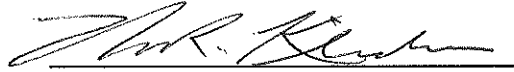
RESOLVED this 20th day of January, 2004.

ATTEST:

BOROUGH OF AVALON



Harry W. Dilmore
Secretary

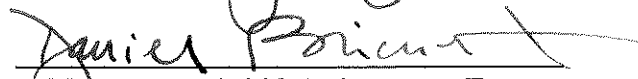


Edward Klicker
President
Borough Council

SEAL

THIS RESOLUTION examined and approved by me

this 20th day of January, 2004.

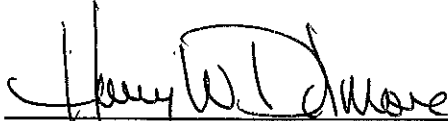


Mayor Daniel K. Bricmont, Esq.


RESOLVED this 20th day of January, 2004.

ATTEST:

BOROUGH OF AVALON



Harry W. Dilmore
Secretary



Edward Klicker
President
Borough Council

SEAL

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this 20th day of January, 2004.



Mayor Daniel K. Bricmont, Esq.