

# SHAHADE AND SHAHADE

ATTORNEYS AT LAW

131 MARKET STREET  
SUITE 200  
JOHNSTOWN, PENNSYLVANIA 15901  
Phone: (814) 535-3513 • Fax: (814) 535-3167

ROBERT A. SHAHADE

MAURICE SHADDEN  
1983

DAVIDA. RAHO

ROBERT E. SHAHADE  
1983

August 12, 2016

Bruce Herschlag  
Assistant Regional Counsel  
Pennsylvania Department of Environmental  
Protection  
Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745

**RE: Borough of Westmont**  
**Cambria County**

Dear Assistant Counsel Herschlag:

As you are aware, on December 9, 2014, the Borough of Westmont entered into a certain Consent Order and Agreement with the good-faith intent to mitigate punitive actions that could have been taken by DEP against the Borough for violations of the Clean Streams Law. The Borough of Westmont complied with the Consent Order and Agreement and, with the prior approval of DEP, passed Rules and Regulations on September 8, 2015 requiring pressure testing or CCTV inspection of all private sewer laterals upon the sale or transfer of any interest in any property within the Borough's Sanitary Sewer System. Said Rules and Regulations further require comprehensive testing of each serviced property within each drainage sector as the public system (mains and laterals to the property lines) is completed. Although construction has not yet started, the \$17,000,000 project to finish rehabilitating the entire Sanitary Sewer System, including mains, manholes and laterals to the property lines, will be scheduled for construction within the next several weeks. The Pennsylvania Infrastructure Investment Authority ("Pennvest") loan in the amount of \$15,702,400, was scheduled to close yesterday but, due to a technical problem, has been deferred for two weeks. Nevertheless, due to the volume of homes being sold, in excess of 200 Notices Of Compliance and/or Applications have been issued and have been met with great and volatile resistance due to the costs of compliance.

As we had discussed on Tuesday, the Borough of Westmont has been overwhelmed with disgruntled residents and customers who are insisting that the Borough unnecessarily committed itself to the stringent requirements of the Consent Order and Agreement, referring to an adjacent municipality who entered into substantively the same Consent Order and Agreement, but which

Bruce Herschlag  
Assistant Regional Counsel  
Page 2  
August 12, 2016

does not require pressure or CCTV testing upon the sale or transfer of interest. In light of that issue which appears to be accurate, the residents and customers of the Borough are also challenging the abatement plan which requires CCTV or pressure testing upon completion of each drainage system throughout the course of the Sanitary Sewer System rehabilitation.

The Borough obviously has been embattled, meeting after meeting, with these issues, and none of the answers that the Councillors, the Mayor, its Engineer or I have tendered, have been satisfactorily received. Therefore, would you please clarify the following:

1. Can the Consent Order and Agreement be amended to place a moratorium on the requirement for pressure testing or CCTV inspection of serviced buildings upon the sale or transfer of any interest?
2. Can the requirement that all serviced properties must be CCTV inspected or pressure tested upon completion of specific drainage areas be suspended until the entire public project is completed?
3. Can the June 30, 2021, compliance date be extended to a period of years beyond completion of the project so that flows may be monitored at the point where sewage exits the Borough's system to determine whether pressure testing or CCTV inspection is necessary at all?
4. The Borough has significant amounts of slab on-grade homes with radiant floor heat. Most of these homes were designed by the same architect, which also have 50 year old irreplaceable terrazzo floors and/or customized tile. In one particular case, the residential property owner whose home was listed for sale at \$175,000 received an estimate in excess of \$80,000 to comply with the Rules and Regulations. The Borough also has schools, churches and businesses that are slab on grade. How and under what circumstances can serviced properties be exempted from complying with the Rules and Regulations and ultimately the mandates contained in Paragraphs 4(v) and 6 of the Consent Order and Agreement?
5. The Borough's Rules and Regulations require pressure testing or CCTV inspection for all under slab or under basement piping (Building Drain and Building Sewer) to the public lateral at the property lines. Has any municipality been successful in eliminating Sanitary Sewer Overflows by only requiring testing or inspections from the outside wall of the serviced property to the public lateral at the property line?

Bruce Herschlag  
Assistant Regional Counsel  
Page 3  
August 12, 2016

In summary, it is very difficult and trying to reconcile the fact that adjacent municipalities are permitted to deviate from the literal interpretation of the Consent Order and Agreement.

I greatly appreciate your assistance in this matter.

Very truly yours,



Robert A. Shahade, Solicitor  
Borough of Westmont

RAS:jms