

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: LUZERNE



POLICE CRIMINAL COMPLAINT
COMMONWEALTH OF PENNSYLVANIA
VS.

Magisterial District Number: 11-3-09
MDJ: Hon. Brian J. Tupper
Address: 11 Carverton Road, Trucksville, PA 18708

DEFENDANT: (NAME and ADDRESS):
DALLAS AREA MUNICIPAL AUTHORITY
First Name Middle Name Last Name

101 Memorial Highway, Shavertown, PA 18708

Telephone: (570)696-4477

NCIC Extradition Code Type

- | | | | |
|--|---|--|--|
| <input type="checkbox"/> 1-Felony Full | <input type="checkbox"/> 5-Felony Pending Extradition | <input type="checkbox"/> C-Misdemeanor Surrounding States | <input type="checkbox"/> Distance: _____ |
| <input type="checkbox"/> 2-Felony Limited | <input type="checkbox"/> 6-Felony Pending Extradition Determ. | <input checked="" type="checkbox"/> D-Misdemeanor No Extradition | |
| <input type="checkbox"/> 3-Felony Surrounding States | <input type="checkbox"/> A-Misdemeanor Full | <input type="checkbox"/> E-Misdemeanor Pending Extradition | |
| <input type="checkbox"/> 4-Felony No Extradition | <input type="checkbox"/> B-Misdemeanor Limited | <input type="checkbox"/> F-Misdemeanor Pending Extradition | |

DEFENDANT IDENTIFICATION INFORMATION

Docket Number: CR-20-23 Date Filed: 1/31/23 OTN/LiveScan Number: _____ Complaint Number: 49-1256 Incident Number: 491256 Request Lab Services? YES NO

GENDER: Male Female
DOB: / / POB: / / Add'l DOB: / /
First Name: _____ Middle Name: _____ Last Name: _____
AKA: _____ Co-Defendant(s): Gen. _____

RACE: White Asian Black Native American Unknown
ETHNICITY: Hispanic Non-Hispanic Unknown

Hair Color: GRY (Gray) RED (Red/Aubn.) SDY (Sandy) BLU (Blue) PLE (Purple) BRO (Brown) BLK (Black) ONG (Orange) WHI (White) XXX (Unk./Bald) GRN (Green) PNK (Pink) BLN (Blonde / Strawberry)

Eye Color: BLK (Black) BLU (Blue) BRO (Brown) GRN (Green) GRY (Gray) HAZ (Hazel) MAR (Maroon) PNK (Pink) MUL (Multicolored) XXX (Unknown)

DNA: YES NO DNA Location: _____ MNU Number: _____ WEIGHT (lbs.): _____

FBI Number: _____ Defendant Fingerprinted: YES NO Ft. HEIGHT In.: _____

Fingerprint Classification: _____

DEFENDANT VEHICLE INFORMATION

Plate #: _____ State: _____ Haz mat: Registration Sticker (MM/YY) / _____ Comm'l Veh. Ind. School Veh. Oth. NCIC Veh. Code _____ Reg. same as Def.

VIN: _____ Year: _____ Make: _____ Model: _____ Style: _____ Color: _____

Office of the attorney for the Commonwealth Approved Disapproved because: _____

(The attorney for the Commonwealth may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing. See Pa.R.Crim.P. 507).

SHAYNA GANNONE
(Name of the attorney for the Commonwealth)

[Signature]
(Signature of the attorney for the Commonwealth)

1/27/2023
(Date)

RECEIVED
JAN 30 2023

I, ANTHONY L. MARTINELLI
(Name of the Affiant) BADGE # 813
(PSP/MPOETC -Assigned Affiant ID Number & Badge #)

of Pennsylvania Office of Attorney General
(Identify Department or Agency Represented and Political Subdivision) PA022400
(Police Agency ORI Number)

do hereby state: (check appropriate box)

1. I accuse the above named defendant who lives at the address set forth above
 I accuse the defendant whose name is unknown to me but who is described as _____

I accuse the defendant whose name and popular designation or nickname are unknown to me and whom I have therefore designated as John Doe or Jane Doe with violating the penal laws of the Commonwealth of Pennsylvania at [220] _____ Kingston Township
(Subdivision Code) (Place-Political Subdivision)

in LUZERNE County [40] _____ on or about AND BETWEEN MAY 2010 THROUGH FEBRUARY 1, 2018
(County Code)



POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: / /	OTN/LiveScan Number	Complaint/Incident Number 49-1256
Defendant Name:	First: DALLAS AREA	Middle: MUNICIPAL	Last: AUTHORITY

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically. (Set forth a brief summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§ 213.1 – 213.7.)

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____				
<input type="checkbox"/>	1	6018.610	1	of the	TITLE 35	1	M3	
Lead?	Offense #	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code
								UCR/NIBRS Code
PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		
Statute Description (include the name of statute or ordinance): UNLAWFUL CONDUCT, 35 P.S. § 6018.610 (1), A MISDEMEANOR OF THE THIRD DEGREE AS DEFINED BY 35 P.S. § 6018.606 (B)								
Acts of the accused associated with this Offense: SEE CONTINUATION SHEET								

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____				
<input type="checkbox"/>	2	6018.610	4	of the	TITLE 35	1	M3	
Lead?	Offense #	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code
								UCR/NIBRS Code
PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		
Statute Description (include the name of statute or ordinance): UNLAWFUL CONDUCT, 35 P.S. § 6018.610 (4), A MISDEMEANOR OF THE THIRD DEGREE AS DEFINED BY 35 P.S. § 6018.606 (B)								
Acts of the accused associated with this Offense: SEE CONTINUATION SHEET								

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____				
<input type="checkbox"/>	3	6018.610	9	of the	TITLE 35	1	M3	
Lead?	Offense #	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code
								UCR/NIBRS Code
PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		
Statute Description (include the name of statute or ordinance): UNLAWFUL CONDUCT, 35 P.S. § 6018.610 (9), A MISDEMEANOR OF THE THIRD DEGREE AS DEFINED BY 35 P.S. § 6018.606 (B)								



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Defendant Name:	First: DALLAS AREA	Middle: MUNICIPAL	Last: AUTHORITY

Acts of the accused associated with this Offense: SEE CONTINUATION SHEET

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____
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<input type="checkbox"/>	4	691.611		of the	TITLE 35	1	M2		
Lead?	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
		PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone	

Statute Description (include the name of statute or ordinance): **UNLAWFUL CONDUCT, 35 P.S. § 691.611, A MISDEMEANOR OF THE SECOND DEGREE AS DEFINED BY 35 P.S. § 691.6012(B)**

Acts of the accused associated with this Offense: SEE CONTINUATION SHEET

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____
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<input type="checkbox"/>	5	691.202		of the	TITLE 35	1	M2		
Lead?	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
		PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone	

Statute Description (include the name of statute or ordinance): **SEWAGE DISCHARE, 35 P.S. § 691.202, A MISDEMEANOR OF THE SECOND DEGREE AS DEFINED BY 35 P.S. § 691.6012(B)**

Acts of the accused associated with this Offense: SEE CONTINUATION SHEET

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____
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<input type="checkbox"/>	6	691.401		of the	TITLE 35	1	M2		
Lead?	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
		PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone	

Statute Description (include the name of statute or ordinance): **OTHER POLLUTIONS AND POTENTIAL POLLUTION 35 P.S. § 691.401, A MISDEMEANOR OF THE SECOND DEGREE AS DEFINED BY 35 P.S. § 691.6012(B)**

Acts of the accused associated with this Offense: SEE CONTINUATION SHEET



POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: //	OTN/LiveScan Number	Complaint/Incident Number 49-1256
Defendant Name:	First: DALLAS AREA	Middle: MUNICIPAL	Last: AUTHORITY

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____
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<input type="checkbox"/>	7	6018.610	2	of the	35	1	M3		
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Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code

PennDOT Data (if applicable)	Accident Number	<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone
Statute Description (include the name of statute or ordinance): UNLAWFUL CONDUCT, 35 P.S. § 6018.610 (2), A MISDEMEANOR OF THE THIRD DEGREE AS DEFINED BY 35 P.S. § 6018.606 (B)				
Acts of the accused associated with this Offense: SEE CONTINUATION SHEET				

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____
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<input type="checkbox"/>				of the				
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Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code

PennDOT Data (if applicable)	Accident Number	<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone
Statute Description (include the name of statute or ordinance):				
Acts of the accused associated with this Offense:				

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____
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<input type="checkbox"/>				of the				
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Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code

PennDOT Data (if applicable)	Accident Number	<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone
Statute Description (include the name of statute or ordinance):				
Acts of the accused associated with this Offense:				



POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: / /	OTN/LiveScan Number	Complaint/Incident Number 49-1256
Defendant Name:	First: DALLAS AREA	Middle: MUNICIPAL	Last: AUTHORITY

- I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made.
- I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.
- This complaint consists of the preceding page(s) numbered 1 through .
- I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

The acts committed by the accused, as listed and hereafter, were against the peace and dignity of the Commonwealth of Pennsylvania and were contrary to the Act(s) of the Assembly, or in violation of the statutes cited.
(Before a warrant of arrest can be issued, an affidavit of probable cause must be completed, sworn to before the issuing authority, and attached.)

(Date)

(Year)

Anthony Montemelli
 Signature of Affiant

AND NOW, on this date 01/31/2023 I certify that the complaint has been properly completed and verified.

An affidavit of probable cause must be completed before a warrant can be issued.

11-3-09
 (Magisterial District Court Number)

[Signature]
 (Issuing Authority)





**POLICE CRIMINAL COMPLAINT
OFFENSE CONTINUATION PAGE**

Docket Number:	Date Filed: / /	OTN/LiveScan Number	Complaint Number 49-1256	Incident Number
Defendant Name:	First: DALLAS AREA	Middle: MUNICIPAL	Last: AUTHORITY	

OFFENSE DESCRIPTION CONTINUATION

Offense # 1: Unlawful Conduct, 35 P.S., 6018.610(1), a misdemeanor of the third degree. The Defendant, Dallas Area Municipal Authority ("DAMA"), by their own conduct or the conduct of another pursuant to 18 Pa. C.S.A. § 306, did dump or deposit, or permit the dumping or depositing of any solid waste onto the surface of the ground or underground or into the waters of the Commonwealth, by any means, unless a permit for the dumping of such solid wastes has been obtained from the department; to wit: the defendant, DAMA, did on or about March 27, 2017 continuing through April 12, 2017, have an unreported overflow of untreated sewage discharge, from their pumping station, allowing solid waste to be dumped or deposited onto the ground, and into the waters of the Commonwealth, at 101 Memorial Highway, Shavertown, Kingston Township, Luzerne County, PA, without a permit from DEP.

Offense #2: Unlawful Conduct, 35 P.S., 6018.610(4), a misdemeanor of the third degree. The Defendant, DAMA, by their own conduct or by the conduct of another pursuant to 18 Pa. C.S.A. § 306, did store, collect, transport, process, treat, beneficially use or dispose of, or assist in the storage, collection, transportation, processing, treatment, beneficially use or disposal of, solid wastes contrary to the rules or regulations adopted under this act, or orders of the department, or any term or condition of any permit, or in any manner as to create a public nuisance or to adversely affect the public health, safety and welfare; to wit: the defendant, DAMA constructed five overflow pipes and associated gates in the north side of the offloading station tank and on or about May 2010, continuing through February 1, 2018, by means of an illegal bypass, disposed of untreated sewage, a solid waste, into the waters of the Commonwealth, at 101 Memorial Highway, Shavertown, Kingston Township, Luzerne County, PA contrary to the rules and regulations of the DEP or without a permit from DEP.

Offense #3: Unlawful Conduct, 35 P.S., 6018.610(9), a misdemeanor of the third degree. The Defendant, DAMA, by their own conduct or by the conduct of another pursuant to 18 Pa., C.S.A. § 306, did cause or assist in the violation of any provision of this act or any rule or regulation of the department, any order of the department, or any term or condition of any permit, to wit: the defendant DAMA, constructed five overflow pipes and associated gates in the north side of the offloading station tank. These structures played a role in facilitating untreated sewage overflows from the DAMA facility, at 101 Memorial Highway, Shavertown, Kingston Township, Luzerne County, PA, in violation of this Act and contrary to the rules and regulations of the DEP.



**POLICE CRIMINAL COMPLAINT
OFFENSE CONTINUATION PAGE**

Docket Number:	Date Filed: / /	OTN/LiveScan Number	Complaint Number 49-1256	Incident Number
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OFFENSE DESCRIPTION CONTINUATION

Offense # 4: Unlawful Conduct, 35 P.S., 691.611, a misdemeanor of the second degree as defined by 35 P.S. § 691.602 (b), the Defendant, DAMA by their conduct or the conduct of another pursuant to 18 Pa., C.S.A. § 306, did fail to comply with any rule or regulation of the department or fail to comply with any order or permit or license of the department, to violate any of the provisions of this act or rules and regulations adopted hereunder, or any order or permit or license 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 to wit: the defendant, DAMA, on numerous occasions between May 2010, and February 1, 2018, did negligently fail to comply with 25 Pa. Code § 91.33(a) and (b) requiring immediate notification to the DEP of any incidents causing or threatening pollution and, if reasonably possible to do so, to notify and known downstream users of the waters; and /or negligently cause water pollution, when the defendant did direct or allow the discharge of untreated sewage during the unreported overflows which occurred from March 27, 2017 through April 12, 2017, and any discharges from the illegal bypass that was constructed around May 2010, from the DAMA pump station at 101 Memorial Highway, Shavertown, Kingston Township, Luzerne County, PA, to be discharged onto the ground and/or indirectly and directly into an unnamed tributary to Toby Creek.

Offense #5: Sewage Discharges, 35 P.S., 691.202, a misdemeanor of the second degree as defined by 35 P.S. § 691.602 (b), the Defendant, DAMA by their conduct or the conduct of another pursuant to 18 Pa., C.S.A. § 306, did discharge or permit the discharge of sewage in any manner, directly or indirectly, into the waters of this Commonwealth unless such discharge is authorized by the rules and regulations of the department or such person or municipality has first obtained a permit from the DEP to wit: the defendant, DAMA, between May 2010, and February 1, 2018, did discharge or permit the discharge of untreated sewage, directly or indirectly, from its pumping station located at 101 Memorial Highway, Shavertown, Kingston Township, Luzerne County, PA, onto the ground and/or indirectly and directly into an unnamed tributary to Toby Creek, without such discharge being authorized by the rules and regulation of the DEP or having first obtained a permit from the DEP.

Offense #6: Prohibition Against Other Pollutions, 35 P.S., 691.401, a misdemeanor of the second degree as defined by 35 P.S. § 691.602 (b), the Defendant, DAMA by their conduct or the conduct of another pursuant to 18 Pa., C.S.A. § 306, did put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution, to wit: the defendant, DAMA, discharged untreated sewage from its pumping station located at 101 Memorial Highway, Shavertown, Kingston Township, Luzerne County, PA, indirectly and directly in to the waters of the Commonwealth, changing the taste color and odor of the unnamed tributary.



**POLICE CRIMINAL COMPLAINT
OFFENSE CONTINUATION PAGE**

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OFFENSE DESCRIPTION CONTINUATION

Offense # 7: Unlawful Conduct, 35 P.S. 6018.610 (2), a misdemeanor of the third degree as defined by 35 P.S. § 6018.606 (b), the defendant DAMA, by their own conduct or the conduct of another pursuant to 18 Pa. C.S.A. § 306, did construct, alter, operate or utilize a solid waste storage, treatment, processing or disposal facility without a permit from the department as required by this act or in violation of the rules or regulations adopted under this act, or orders of the department, to wit: the defendant, DAMA constructed five overflow pipes and associated gates in the north side of the offloading station tank and on or about May 2010, continuing through February 1, 2018, by means of an illegal bypass, disposed of untreated sewage, a solid waste, onto the ground and into the waters of the Commonwealth, at 101 Memorial Highway, Shavertown, Kingston Township, Luzerne County, PA without a permit from DEP.



POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: / /	OTN/LiveScan Number	Complaint/Incident Number 49-1256
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AFFIDAVIT of PROBABLE CAUSE

DAMA AFFIDAVIT of PROBABLE CAUSE

Being duly sworn according to law, your affiant, Anthony L. Martinelli, of the Pennsylvania Office of Attorney General, Bureau of Criminal Investigations, Environmental Crimes Section, deposes and states there is probable cause to believe that Dallas Area Municipal Authority has committed the crimes described below for the issuance of a summons.

I. INTRODUCTION

1. Your affiant, Anthony L. Martinelli, is a Supervisory Special Agent with the Pennsylvania Office of Attorney General (OAG), Bureau of Criminal Investigations (BCI), and Environmental Crimes Section (ECS). Your affiant has been employed by the OAG and assigned to the ECS since May 2018. The ECS investigates and prosecutes violations of Pennsylvania's environmental laws, as well as the Pennsylvania Crimes Code.

2. On October 10, 2019, OAG Executive Deputy Attorney General accepted jurisdiction pursuant to PS 732-205 (a) (6) into an investigation of Dallas Area Municipal Authority (DAMA) located at 101 Memorial Highway, Shavertown PA. It is alleged that DAMA allowed untreated sewage to be discharged to Toby's Creek by way of an unnamed tributary.

II. INVESTIGATIONS

3. OAG, SSA Anthony Martinelli reviewed the referral documents from the Office of General Counsel and learned that DAMA is the permittee and operator of a municipal sewage collection/storage facility. DAMA was constructed and operates under the authority of a DEP, Part II Water Quality Management Permit No. 4009408.

4. Your affiant's investigation determined that DAMA was formed by the municipalities of Dallas Borough, Dallas Township and Kingston Township, to construct, operate and maintain a waste water collection system to serve the sewage disposal needs of these three municipalities.

5. Your affiant interviewed DEP Engineer, Scott Novatnack who is familiar with DAMA's facility. Novatnack stated that DAMA was a sewage treatment plant until the 1980s. Subsequently, DAMA transitioned from a treatment plant to a pumping station that collected sewage from Harvey's Lake Borough, Lehman Township, Dallas Township, Dallas Borough, Kingston Township and Jackson Township. DAMA then pumps the sewage to Wyoming Valley Municipal Authority's treatment plant. Tom Keiper is DAMA's current Executive Director, Larry Spaciano was his predecessor, and Ed Hann is DAMA's current Supervisor of the Waste Water Division.

6. Novatnack stated that a 30 inch line brings the sewage into the DAMA's pump station from the six municipalities that DAMA serves. In 2008, DAMA constructed an equalization tank to handle larger flows during storm events. An 18 inch line from the pump station sends sewage to the equalization tank. DAMA never obtained a permit from DEP prior to construction of this system. Later, however, a permit was issued. Novatnack stated that DEP's opinion was that the tank was not large enough to handle large flows, the permit was issued because "something is better than nothing."



POLICE CRIMINAL COMPLAIN

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Unreported Sanitary Sewer Overflow

7. Your affiant reviewed DEP's April 12, 2017, DAMA, Sewage Complaint Inspection Report of Water Quality Specialist, Chris Laczi. The inspection of the facility confirmed an unpermitted and uncontrolled Sanitary Sewer Overflow to an unnamed tributary to Toby Creek. It was estimated that 0.5 – 1.5 million gallons of untreated sewage per day was being discharged during the Sanitary Sewer Overflow. The Sanitary Sewer Overflow was not reported to DEP as required and lasted for 17 days.

Non-Permitted Bypass Pipe

8. On October 5, 2017, William Feher was interviewed by DEP's Special Investigator Darrell Zavislak. Feher had worked for DAMA as the Solid Waste Supervisor from October 20, 2011 until early October 2016. Feher stated that on January 15, 2015, he was present at the DAMA facility when he observed Toby Creek running high and dirty. Feher walked upstream on Toby Creek and did not observe a dirty flow. He then walked upstream of the unnamed tributary to Toby Creek. There, approximately twenty to thirty feet above the box culvert on the DAMA facility, he observed a twenty four-inch concrete pipe, within a rock structure being used to secure the creek bank. The twenty four-inch pipe was positioned to empty into the concrete box culvert. From the twenty four-inch pipe he observed a full flow of black liquid.

9. In addition, Feher stated that on September 23, 2017, he entered the concrete box culvert at the DAMA facility. Approximately ten feet in, at the top of the concrete box culvert, he saw a green PVC pipe leading into the concrete box culvert. It was at this time that Feher contacted DEP to inform DEP of what he observed.

10. As part of your affiant's investigation, on February 26, 2021, your affiant also interviewed William Feher, and provided him with the investigative report of the interview he provided to DEP in 2017. Feher confirmed the accuracy of said report.

11. Based on the information provided to DEP from William Feher, DEP conducted another inspection of the DAMA facility on February 1, 2018. Your affiant reviewed the Sewage Compliance Inspection Report drafted by DEP Water Quality Specialist Chris Laczi from the February 1, 2018 inspection. During the inspection, DEP confirmed the existence of a twelve-inch diameter, underground PVC pipe, along with related inlets, piping and waste water flow diversions at the DAMA facility. None of these structures were reported to, approved by or permitted by DEP.

12. In addition, the February 1, 2018 inspection determined that the twelve-inch diameter PVC pipe ("the bypass pipe") diverted untreated sewage wastewater from a manhole for the equalization tank sewage line, to the interior of the concrete box culvert and from there, the sewage waste water discharged to Toby Creek by way of an unnamed tributary. It appeared the specific placement of the bypass pipe in the concrete box culvert was to obscure the discharge so it could not be seen without entering the culvert.

13. During DEP's February 1, 2018 inspection, Water Quality Specialist Chris Laczi observed evidence of a Sanitary Sewer Overflow (SSO) from the pump station manhole. Another bypass pipe from the Bar Screen to the unnamed tributary to Toby Creek was found. DEP attempted to run a line camera through this pipe, but the camera could not make it through because it was obstructed by a collapsed section of the pipe



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14. In addition, during the February 1, 2018 inspection, DEP also found five overflow pipes and associated gates in the north side of the offloading station tank. It appeared that these structures played a role in facilitating sanitary sewer overflow from the DAMA facility. These structures were never reported to, approved by, or permitted by DEP. Upon discovery, DEP requested that DAMA refrain from using the bypass pipe.

15. Your affiant interviewed DEP Water Quality Specialist Supervisor Sandy Insalaco, who stated that prior to the February 1, 2018 DAMA inspection, DAMA had reported very few sanitary sewer overflows compared to after the inspection. The sanitary sewer overflows reported by DAMA were documented in a June 21, 2019 Consent Order and Agreement (COA).

16. Your affiant reviewed the above mentioned COA, which was entered into by DAMA due to the violations that DEP discovered during the February 1, 2018 inspection. It documented that DAMA reported sanitary sewer overflows to DEP for July 1, 2015 and March 3, 2016. The seventeen day sanitary sewer overflow that was found by DEP in 2017 was documented in the 2019 COA. In 2018, after DEP's February 1, 2018, inspection, DAMA reported 50 days of sanitary sewer overflows at their facility.

17. Your affiant interviewed Wayne Lykon, who had previously been interviewed by DEP in 2018. Lykon worked for Pioneer Construction from September 2009 to May 2010. During that time period, Lykon participated in construction activities at DAMA. Lykon stated that during the construction activities, he was directed by Ed Hann to cut a hole within the existing manhole at the plant. Lykon used a diamond blade cutout saw to cut a hole in the existing manhole. The area around the manhole and roadway had already been opened up to allow the installation of the bypass pipe. Once the bypass pipe was installed, it was covered over. Lykon could not recall specifically when the bypass pipe was put in; however, it was during the time that he was there from September 2009 to May 2010.

18. In addition, Lykon stated that the bypass pipe was not in the project's design, nor was a change order generated for its installation.

19. As part of your affiant's interview of Lykon, Lykon was provided with an investigative report that DEP's Darrell Zavislak wrote from the interview he conducted of Lykon on March 13, 2018. Lykon confirmed the accuracy of said report.

20. Lykon drew and provided a sketch to your affiant. The sketch indicated the manhole where the cutout and the bypass pipe was installed and run to the concrete box culvert. Lykon stated that he and his crew were directed by Ed Hann, who Lykon believed to be second in command at DAMA.

21. Your affiant interviewed Chad Derhammer, a DAMA Waste Water employee from 2005-2009 and 2012-present. Derhammer stated that he was aware of the equalization tank manhole bypass prior to the DEP's 2018 inspection. He indicated the bypass pipe was placed in the manhole so that the equalization tank pumps could be worked on. Derhammer further explained that if any of the three equalization tank pumps became blocked, DAMA would have to shut them down and pull them. Derhammer stated that if the bypass pipe was not there, the employees would get covered with sewage when trying to work on the pumps.

22. In addition, Derhammer stated that since DEP was at DAMA in 2018, the equalization tank manhole bypass pipe has been removed. He was not sure when or who removed it. The pipe was taken out and the hole was plugged. He stated that if necessary, they will now shut the flow to the equalization tank off with a valve at the pump station.



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23. Your affiant also interviewed Adam Harris, DAMA Waste Water employee from 2005-present. Harris stated that there was a bypass pipe in the equalization tank manhole, but he did not know who installed it. Harris opined that it would have been installed by Pioneer Construction, who had done work on the equalization tank project. Harris indicated that the bypass pipe was used when they needed to work on the equalization tank pumps. He further explained that the pumps would get blocked with debris that was coming into the system. Harris stated that head pressure would divert the flow to the bypass pipe, which would prevent the employees from getting sewage on them when they were working on the pumps.

24. Harris also stated that he removed the equalization tank bypass pipe at the direction of his supervisor, Ed Hann or DAMA Director, Larry Spaciano. The removal was required by DEP after its 2018 discovery. Harris stated that he dug up the bypass pipe, and filled the hole with concrete. He does not think that sanitary sewer overflow have increased now that the equalization tank bypass pipe has been removed. Harris stated that currently, if necessary, they will reroute the sewage flow from the pump station, using a valve. When this is done the flow is cut off to the equalization tank.

25. On August 2, 2022, your affiant interviewed Edward Hann in the presence of his attorney. Hann stated that he began his employment with DAMA in December 1980 as an operator at DAMA. Between 2005 and 2006 Hann was promoted to supervisor of the waste water division. Hann stated that the continued overflow issues at DAMA led to the construction of the equalization tank and associated projects. Hann was aware of the construction of the bypass pipe from the manhole to the box culvert. Hann did not say who instructed the bypass pipe installation, but that if he had instructed it to be put in, he would have had approval from DAMA Executive Director, Larry Spaciano. Hann said that he did not know who actually constructed the bypass pipe, stating "I know it was there. I can't do anything without approval." He further stated that he did not have authorization to make construction changes, such as adding a bypass pipe.

26. Your affiant interviewed Richard Kresge, former Quad III, Civil Engineer from 1993 – 2017. Kresge was involved with the DAMA equalization tank project. His team did the plans, specs and design construction management. Kresge stated that there was no need for a valve to shut down the flow to the equalization tank pump station to work on the pumps. There were three pumps and they could be worked on while flow continued. Kresge stated that the system was not designed with a bypass.

27. In addition, your affiant reviewed the DAMA board meeting minutes for February 2018. Under "Old Business" it stated "Mr. Keiper reported that he had received the inspection notification and Notice of Violation from PA DEP regarding the February 1, 2018 inspection of the Authority's main pump station. As this is an ongoing legal matter, discussion will be held in executive session." No additional reference to the DEP February 1, 2018 inspection was found in the minutes. Your affiant requested the minutes from the executive's session and was advised that no record was kept, since an executive session is a closed meeting.

28. Your affiant interviewed John Oliver, DAMA Chairman from 2016 to present. Oliver did not recall any internal investigation into, or reprimands for the installation of the bypass pipe.

29. Your affiant requested DAMA's purchasing records and associated documentation for 2009 – 2012, the time period that the bypass pipe was installed. DAMA Executive Director Tom Keiper was unable to find any purchasing records or receipts for that time frame.



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30. As part of this investigation your affiant contacted the DEP office in Wilkes Barre, PA and received a certification of records that stated no permits were issued by DEP to Dallas Area Municipal Authority under the Pennsylvania Clean Streams Law 35 P.S. § 691.1 et seq. (CSL) or the Pennsylvania Solid Waste Management Act 35 P.S. § 6018.101 et seq. (SWMA) to discharge untreated sewage to the unnamed tributary to Toby Creek or Toby Creek, at or near the Dallas Area Municipal Authority, 101 Memorial Highway, Shavertown, PA 18708, Kingston Township, Luzerne County. No record was found to exist that DEP or its predecessor, the Department of Environmental Resources, has ever granted an exemption to Dallas Area Municipal Authority from any permit requirements of the Clean Streams Law or the Solid Waste Management Act.

31. Your affiant is familiar with the Pennsylvania Solid Waste Management Act 35 P.S. §6018.101, which provides the following definitions

“Disposal.” The incineration, deposition, injection, dumping, spilling, leaking, or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air or is discharged to the waters of the Commonwealth.

“Person.” Any individual, partnership, corporation, association, institution, cooperative enterprise, municipal, of General Services and the State Public School Building Authority), or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. In any provisions of this act prescribing a fine, imprisonment or penalty, or any combination of the foregoing, the term “person” shall include the officers and directors of any corporation or other legal entity having officers and directors.

“Facility” Land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place or where hazardous waste is treated, stored or disposed. The term includes land thereby used or affected during the lifetime of operations, including areas where solid waste management actually occurs, support facilities, offices, equipment sheds, air and water pollution control and treatment systems, access roads, associated onsite or contiguous collection, transportation and storage facilities, closure and postclosure care and maintenance activities, contiguous borrow areas and other activities in which the natural land surface has been disturbed or used as a result of or incidental to operation of the facility.

“Solid Waste.” Any waste, including but not limited to, municipal, residual or hazardous wastes, including solid, liquid, semisolid or contained gaseous materials. The term does not include coal ash or drill cuttings.

32. The SWMA § 6018.610(1) provides that it shall be unlawful for any person to dump or deposit, or permit the dumping or depositing, of any solid waste onto the surface of the ground or underground or into the waters of the Commonwealth, by any means, unless a permit for the dumping of such solid wastes has been obtained from the department; provided, the Environmental Quality Board may by regulation exempt certain activities associated with normal farming operations as defined by this act from such permit requirements.



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33. The SWMA § 6018.610(2) provides that it shall be unlawful for any person to construct, alter, operate or utilize a solid waste storage, treatment, processing or disposal facility without a permit from the department as required by this act or in violation of the rules or regulations adopted under this act, or orders of the department, or in violation of any term or condition of any permit issued by the department.

34. The SWMA § 6018.610(4) provides that it shall be unlawful for any person to store, collect, transport, process, treat, beneficially use, or dispose of, or assist in the storage, collection, transportation, processing, treatment, beneficial use or disposal of, solid waste contrary to the rules or regulations adopted under this act, or orders of the department, or any term or any condition of any permit, or in any manner as to create a public nuisance or to adversely affect the public health, safety and welfare.

35. The SWMA § 6018.610(9), provides that it shall be unlawful to cause or assist in the violation of any provision of this act or any rule or regulation of the department, any order of the department, or any term or condition of any permit.

36. The SWMA § 6018.606 (b) provides that any person other than a municipal official exercising his official duties who violates any provision of this act, any rule or regulation of the department, any order of the department, or any term or condition of any permit, shall be guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than \$1,000 but not more than \$25,000 per day for each violation or to imprisonment for a period of not more than one year, or both.

37. Your affiant is familiar with the Pennsylvania Clean Streams Law 35 P.S. § 691.1 which provided the following definitions:

“Person” shall be construed to include any natural person, partnership, association or corporation or any agency, instrumentality or entity of Federal or State Government. Whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term “person” shall not exclude the members of an association and the directors, officers or agents of a corporation.

“Pollution” shall be construed to mean contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid or other substances into such waters.

“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.

“Waters 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.



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38. The Clean Streams Law § 691.202 provides that no municipality or person shall discharge or permit the discharge of sewage in any manner, directly or indirectly, into the waters of this Commonwealth unless such discharge is authorized by the rules and regulations of the department or such person or municipality has first obtained a permit from the department. Such permit before being operative shall be recorded in the office of the recorder of deeds for the county wherein the outlet of said sewer system is located and in case the municipality or person fails or neglects to record such permit, the department shall cause a copy thereof to be so recorded, and shall collect the cost of recording from the municipality or person. No such permit shall be construed to permit any act otherwise forbidden by any decree, order, sentence or judgment of any court, or by the ordinances of any municipality, or by the rules and regulations of any water company supplying water to the public, or by laws relative to navigation. For the purposes of this section, a discharge of sewage into the waters of the Commonwealth shall include a discharge of sewage by a person or municipality into a sewer system or other facility owned, operated or maintained by another person or municipality and which then flows into the waters of the Commonwealth. A discharge of sewage without a permit or contrary to the terms and conditions of a permit or contrary to the rules and regulations of the department is hereby declared to be a nuisance.

39. The Clean Streams Law § 691.401 provides that It shall be unlawful for any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined. Any such discharge is hereby declared to be a nuisance.

40. The Clean Streams Law § 691. 602(b) Any person or municipality who negligently violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to the act is guilty of a misdemeanor of the second degree and, upon conviction, shall be subject to a fine of not less than two thousand five hundred dollars (\$ 2,500) nor more than twenty-five thousand dollars (\$ 25,000) for each separate offense or to imprisonment for a period of not more than two years, or both.

III. CONCLUSION

41. Based upon the above mentioned facts, your affiant has probable cause to believe that Dallas Area Municipal Authority committed criminal violations of the Solid Waste Management Act and the Clean Streams Law as set forth in the criminal complaint which is incorporated herein by reference.

42. As may be required by Rule 507(a) of the Pennsylvania Rules of Criminal Procedure, Shayna Gannone, Deputy Attorney General, has reviewed and approved the affidavit of probable cause and the criminal complaint for the issuance of summons.

43. Your affiant asserts and verifies that the facts contained in this affidavit are true, correct and accurate to the best of my knowledge, information and belief.



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I, , BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

I CERTIFY THAT THIS FILING COMPLIES WITH THE PROVISIONS OF THE CASE RECORDS PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA THAT REQUIRE FILING CONFIDENTIAL INFORMATION AND DOCUMENTS DIFFERENTLY THAT NON-CONFIDENTIAL INFORMATION AND DOCUMENTS.

Anthony Martelli

(Signature of Affiant)

Sworn to me and subscribed before me this _____ day of _____

01/31/2023

Date

[Signature]

Magisterial District Judge

My commission expires first Monday of January, 2024

