UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

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IN THE MATTER OF District of Columbia Water and Sewer Authority 5000 Overlook Avenue, SW Washington, DC 20032, Respondent. Proceedings under Sections 1414(a) and (g) of the Safe Drinking Water Act, 42 U.S.C. §§300g-3(a) & (g)	SUPPLEMENTAL ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT Docket No. SDWA-03-2005-0025DS

1. This Supplemental Administrative Order ("AO" or "Order") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Sections 1414(a)(2)(A) & 1414(g) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. §§ 300g-3(a)(2)(A) & 300g-3(g), delegated to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, EPA Region III.

2. EPA and the District of Columbia Water and Sewer Authority ("DCWASA" or "Respondent") (collectively "the Parties") agree that resolution of this matter without litigation is in the public interest. DCWASA consents to the issuance of this AO and agrees to perform all actions required by its terms and conditions.

3. For purposes of settlement and in the public interest, DCWASA neither admits nor denies the Findings in this Order, and admits and waives any objection to EPA's jurisdiction and authority to issue and enforce any part of this Order.

4. Paragraphs 1 - 93 of Administrative Order for Compliance on Consent, Docket No. SDWA-03-2004-0259DS issued June 17, 2004 are incorporated by reference herein. This Supplemental Administrative Order on Consent does not change the effective date or the timing

of any requirement set forth in Administrative Order for Compliance on Consent Docket No. SDWA-03-2004-0259DS issued June 17, 2004.

I. FINDINGS

5. On July 16, 2004, the law firm of Covington and Burling released a "Summary of Investigation Reported to the Board of Directors of the District of Columbia Water and Sewer Authority" ("Covington & Burling Report"). Covington & Burling was retained by DCWASA's Board of Directors to "investigate WASA's management of lead monitoring activities, beginning with the 2000-01 lead monitoring period." *See* Covington & Burling Report at 2.

6. Among other things, the Covington & Burling Report stated that, for the compliance period ending September 30, 2003, at least 417 of the lead service lines reported by DCWASA to EPA pursuant to 40 C.F.R. §§ 141.84(b), (c) & (g) and 141.90(e), as not needing to be physically replaced (i.e., contributing less than 15 parts per billion lead) were tested by allowing the tap to run for five minutes before taking the sample ("five-minute methodology"). The five-minute methodology is not among the testing methodologies described in 40 C.F.R. § 141.86 (b)(3). The Covington & Burling Report also stated that DCWASA did not report the use of the five-minute methodology to EPA. *See* Covington & Burling Report at 108-109.

7. On September 3, 2004, EPA issued an information request to DCWASA pursuant to Section 1445(a) of the SDWA, 42 U.S.C. § 300j-4(a) ("September 3, 2004 information request"). The purpose of the September 3, 2004 information request was to follow up certain statements and references in the Covington & Burling Report, including those described in Paragraphs 5 and 6 above.

8. On September 21, 2004, DCWASA responded to EPA's information request.

9. In a document produced by DCWASA and dated July 7, 2003 (WAS0007369), DCWASA personnel acknowledged that the five-minute methodology being utilized by DCWASA was not among the testing methodologies described at 40 C.F.R. § 141.86 (b)(3).

10. Another document produced by DCWASA and dated August 6, 2003 (WAS0007371), states that of the 1,439 samples taken as of that date, 847 were taken using the five-minute methodology. Of the 847 samples taken using the five-minute methodology, 566 were found to be contributing less than 15 parts per billion lead ("passed"), a "pass" rate of 66.8%. Of the 592 samples taken using the change in temperature methodology described in 40 C.F.R. § 141.86 (b)(3), 164 were passed, a "pass" rate of 27.5%.

11. EPA has reviewed DCWASA's Annual Report for Lead Service Line Replacement Program dated September 30, 2003. Based on EPA's review, at least 404 of the samples reported in that document were taken prior to July 6, 2003, when DCWASA was using the five-minute methodology.

12. Accordingly, EPA finds that DCWASA did not comply with 40 C.F.R. §§ 141.84(b), (c) & (g) and 141.90(e) for the compliance period ending September 30, 2003.

II. ORDER

Therefore, this 14th the day of January, 2005, DCWASA agrees and is hereby ordered to conduct the following activities:

13. Within 30 days of the effective date of this Order, DCWASA shall submit to EPA a determination of the number of lead service lines reported as "passed" pursuant to 40 C.F.R. §§ 141.84(b) & (c) in the Annual Report for Lead Service Line Replacement Program dated September 30, 2003, and which service lines were sampled using the five-minute methodology. DCWASA's submission shall describe how DCWASA determined the number of lead service

lines reported as "passed" and all documents used by DCWASA to make its determination. DCWASA shall provide any additional documentation or information requested by EPA within ten days of a request by EPA.

14. Within 30 days of the effective date of this Order, DCWASA shall submit to EPA documentation demonstrating which, if any, lead service lines identified pursuant to Paragraph 13 above, have been physically replaced by DCWASA, but not reported to EPA in either 2003 or 2004 as having been physically replaced pursuant to 40 C.F.R. §§ 141.84(b) & 141.90(e). DCWASA shall provide any additional documentation or information requested by EPA within ten days of a request by EPA.

15. No later than September 30, 2007, DCWASA shall physically replace a number of lead service lines equal to the number calculated pursuant to Paragraph 13 above minus the number of lead service lines identified in Paragraph 14 above. The lead service lines physically replaced pursuant to this paragraph will be in addition to those that DCWASA is already required to physically replace pursuant to the Administrative Order for Compliance on Consent, Docket No. SDWA-03-2004-0259DS issued June 17, 2004.

16. Within 30 days of the effective date, DCWASA shall submit to EPA for review and approval a draft notice to all customers whose lead service lines were "passed" pursuant to the five-minute methodology. The draft notice shall convey the following: (1) that the customer's service line was tested using a methodology that is not described in EPA's regulations; (2) that because the customer's service line was tested using a methodology that is not described in EPA's regulations, there is a question as to whether the sample results can be relied upon; (3) that DCWASA urges the customer to utilize the filter provided by DCWASA as part of DCWASA's filter program; (4) that DCWASA offers to provide a filter if the customer

did not receive one or no longer possesses the filter that was provided; (5) a description of the flushing procedures recommended by the District of Columbia Department of Health; and (6) identification of a contact person to respond to questions.

17. EPA may approve, disapprove, modify or comment upon the draft notice submitted pursuant to Paragraph 16 above. If EPA disapproves, modifies or comments upon the draft notice submitted pursuant to Paragraph 16 above, DCWASA shall, within 14 days of receiving EPA's disapproval, modification or comments, submit to EPA for review and approval a revised draft notice addressing the issues raised by EPA's disapproval, modification or comments.

18. Within 21 days after EPA approves the draft notice described in Paragraph 16 above, DCWASA shall send the draft notice by First Class Mail to every customer whose lead service line was "passed" using the five-minute methodology, regardless of whether that customer's service line was one of those reported in DCWASA's Annual Report for Lead Service Line Replacement Program dated September 30, 2003, or provide EPA with documentation that a particular customer's service line has been re-tested using the procedure described in 40 C.F.R. § 141.86 (b)(3), physically replaced, or determined to be copper. According to the document referenced in Paragraph 10 above, at least 566 customers' lines were passed using the five-minute methodology.

19. EPA may agree, disagree or comment upon the sufficiency of documentation provided pursuant to Paragraphs 13, 14 and 18 above. To the extent EPA disagrees with or comments upon the sufficiency of documentation provided pursuant to Paragraphs 13, 14 and 18 above, DCWASA shall provide within ten days additional documentation or other information to address EPA's concerns.

20. All reports and other documents submitted to EPA pursuant to this Order shall be accompanied by the following statement signed by an appropriate representative of DCWASA:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my personal knowledge or my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and/or imprisonment for knowing violations."

21. All submittals required by this Order shall be mailed to:

Karen D. Johnson (3WP32)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103
johnson.karend@epa.gov

22. Any communications from EPA to DCWASA necessitated by this Order shall be sent to:

General Counsel
District of Columbia Water and Sewer Authority
5000 Overlook Avenue, S.W.
Washington, DC 20032

with a copy to:

Chief Engineer/Deputy General Manager
District of Columbia Water and Sewer Authority
5000 Overlook Avenue, S.W.
Washington, DC 20032

23. This Order resolves the specific matters set forth in this Order. EPA reserves the right to commence action against any person, including DCWASA, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nothing in this Order shall be construed as

prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of DCWASA's violations of this Order or of the statutes and regulations upon which this Order is based or for DCWASA's violation of any applicable provision of law, except that EPA agrees that EPA will not seek civil penalties for the specific matters set forth in this Order unless DCWASA fails to comply with this Order. Except for DCWASA's admission and waiver of any objection to EPA's jurisdiction and authority to issue and enforce any part of this Order as set forth in Paragraph 3, DCWASA reserves all defenses available to it in any future civil or administrative action by EPA and/or proceedings with any third parties for noncompliance with the Lead and Copper Rule.

24. Issuance of this Order does not waive, suspend or alter DCWASA's obligation to comply with the SDWA, 42 U.S.C. §§ 300f-300j-26, or its implementing regulations, promulgated at 40 C.F.R. Part 141, which remain in full force and effect, or any other state or local law, regulation, ordinance or permit. Compliance with this Order shall be no defense to any action commenced pursuant to such authorities, nor shall it be construed as in any way limiting the ability of the United States to take any further steps to protect public health or to prevent violations of the Safe Drinking Water Act, including pursuit of injunctive relief in federal court and civil and/or criminal penalties. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the SDWA.

25. Violation of any term of this Order may subject Respondent to a penalty of up to $32,500 per day of violation, pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g).

26. This Consent Order may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and

effect as if that party had signed all other counterparts.

27. All of the terms and conditions of this Order together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this Order, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Director, Water Protection Division, then the entire Order shall be null and void.

28. Any modification of this Order must be in writing and signed by both parties hereto.

29. The time periods in this Order are calendar days unless otherwise specified. If any due date specified by this Order falls on a weekend or holiday, the submission or activity required shall be due the first business day following the specified due date.

30. The undersigned representative of DCWASA certifies that he or she is fully authorized by DCWASA to enter into the terms and conditions of this Order and to execute and legally bind DCWASA to it.

31. This Order is effective when executed by both parties.

FOR THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY:

1/6/05

Jerry N. Johnson
General Manager
District of Columbia Water and Sewer Authority

Date

SO ORDERED, this 14th day of January, 2005.

Jon M. Capacasa, Director
Water Protection Division
United States Environmental Protection Agency
Region III