UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Jerry Johnson
General Manager
District of Columbia Water and Sewer Authority
5000 Overlook Avenue, S.W.
Washington, D.C. 20032

AUG 2 3 2006

Avis M. Russell, Esq.
General Counsel
District of Columbia Water and Sewer Authority
5000 Overlook Avenue, S.W.
Washington, D.C. 20032

Re: EPA Docket No. SDWA-03-2006-0186

Dear Mr. Johnson and Ms. Russell:

Enclosed is a document entitled "Proceeding to Assess Civil Penalty Pursuant to Section 1414(g)(3) of the Safe Drinking Water Act and Notice of Opportunity for Hearing," hereinafter referred to as the "Complaint." The United States Environmental Protection Agency Region III (EPA or the Agency) has filed this Complaint against the District of Columbia Water and Sewer Authority ("DCWASA" or "Respondent"). In the Complaint, EPA alleges that DCWASA has violated the Safe Drinking Water Act ("SDWA" or "Act").

40 C.F.R. § 2.105(a)(6) of the EPA regulations implements the requirements of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, stating that EPA will not disclose information subject to, *inter alia*, Exemption 6 which provides: "Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The Complaint references certain sample locations identified by street address. In order to ensure the privacy of DCWASA's customers, EPA has filed the unredacted Complaint under seal, along with a Motion for a Protective Order. EPA also has filed a redacted version of the Complaint for the public record. Copies of the redacted and unredacted versions of the Complaint and EPA's Motion for a Protective Order are enclosed.

DCWASA may elect to resolve the penalty proceeding as set forth in the Complaint. Otherwise, a response addressing each allegation in the Complaint must be filed within 30 days of receipt or, according to the rules governing this case (enclosed), the allegations will be deemed admitted. Failure to respond may result in the issuance of a Default Order and Respondent's preclusion from participating in further administrative hearings.

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Respondent has the right to request a Hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Such request should be included with the response to this Complaint and must also be made within 30 days of receipt of this Complaint.

Whether or not a Hearing is requested, EPA invites Respondent to confer informally with the Agency concerning the alleged violations and the amount of the proposed penalty. Respondent may represent itself or be represented by an attorney at any conference, whether in person or by telephone. An attorney from the Agency's Office of Regional Counsel will normally be present at any informal conference which is held.

EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty, to pursue the possibility of settlement through an informal conference. If such a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement and Final Order signed by Respondent and by the Director of the Water Protection Division, EPA, Region III. The issuance of such a Consent Agreement and Final Order shall constitute a waiver by Respondent of its right to a hearing on, and a judicial appeal of, the agreed upon civil penalty.

A request for an informal conference does not extend the 30-day period by which Respondent must request or waive a Hearing on the proposed penalty assessment and the two procedures can be pursued simultaneously. A copy of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, is enclosed for your reference.

The following is for Respondent's information, to the extent that Respondent may qualify as a "small business" under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"). Enclosed is a copy of the SBREFA Information Sheet. This Information Sheet provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the Information Sheet, any decision to participate in such program or to seek compliance assistance does not relieve Respondent of its obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law and will not affect EPA's decision to pursue this enforcement action. To preserve its legal rights, Respondent must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

If you wish to discuss the possibility of settlement of this matter, please contact Stefania D. Shamet of the Office of Regional Counsel, at 215-814-2682.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

Enclosures

cc: Elizabeth Berry, District of Columbia Dept. of the Environment

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103

In the Matter of	)	
District of Columbia Water and Sewer Authority 5000 Overlook Avenue, SW Washington, DC 20032,	)	Proceeding to Assess Civil Penalty Pursuant to Section 1414(g)(3) of the Safe Drinking Water Act and Notice of Opportunity for Hearing
Respondent.	)	Dkt. No. SDWA-03-2006-0186
PWS ID DC000002	)	**CERTAIN INFORMATION REDACTED PURSUANT TO 5 U.S.C. § 552(b)(6). UNREDACTED VERSION FILED UNDER SEAL**

I. STATUTORY AUTHORITY

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. § 300g-3(g)(3)(B), and delegated to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division Region III ("Complainant").

2. Pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule (codified at 40 C.F.R. Part 19), and in accordance with the *Rules of Practice Governing the Administrative Assessment of Civil Consolidated Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, Complainant hereby requests that a civil penalty be assessed against the District of Columbia Water and Sewer Authority ("DCWASA" or "Respondent") in the amount of $27,500 for violations of the Administrative Order for Compliance on Consent issued June 17, 2004. The Administrative Order required compliance with the SDWA and its implementing regulations.

II. FACTUAL ALLEGATIONS AND FINDINGS OF VIOLATIONS

3. Pursuant to Section 1413 of the Act, 42 U.S.C. § 300g-2, a State may apply and the Administrator may approve a State for primary enforcement responsibility for public water systems in that State. To date, the District of Columbia has not been granted such responsibility. Therefore, EPA has primary enforcement responsibility for the SDWA in the District of Columbia.

4. DCWASA provides piped drinking water for human consumption to persons in the District of Columbia (PWS ID DC000002). As such, DCWASA is a "public water system" within the meaning of Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2, and serves at least 15 service connections used by residents year-round or regularly serves at least 25 year-round residents and is a "community water system" within the meaning of 40 C.F.R. § 141.2.

5. DCWASA owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of Section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g-1, and its implementing regulations, 40 C.F.R. Part 141.

6. DCWASA is a "person" within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

7. Section 1445(a) of the SDWA, 42 U.S.C. § 300j-4(a), authorizes EPA to require owners and operators of public water systems to provide information as may be necessary to determine compliance with the SDWA.

8. The requirements of Subpart I of the National Primary Drinking Water Regulations ("NPDWR") are promulgated at 40 C.F.R. § 141.80-.91 and constitute the NPDWR for control of lead and copper ("Lead and Copper Rule" or "LCR"). EPA's drinking water Lead and Copper Rule establishes treatment techniques to be performed if the "action level" for lead is exceeded.

9. The action level for lead is exceeded when the concentration of lead in more than ten percent of one-liter tap water samples collected during any monitoring period conducted in accordance with 40 C.F.R. § 141.86 is greater than 0.015 mg/L (15 parts per billion or 15 ppb), i.e., if the "90th percentile" is greater than 15 ppb based on a one-liter sample (40 C.F.R. § 141.80(c)). When the LCR action level is exceeded in a large system that has been deemed to have optimized corrosion control, the LCR requires, among other things, the system to replace lead service lines that contribute more than 15 ppb to lead in drinking water and conduct public education to the consumers of the water system (40 C.F.R. § 141.80).

10. On August 26, 2002, DCWASA reported that, during the compliance period July 1, 2001- June 30, 2002, more than ten percent of the water samples tested

exceeded the 15 ppb lead action level. Specifically, the level of lead in first draw water samples from the 90th percentile of 53 residences was 75 ppb. Because this monitoring exceeded the LCR lead action level of 15 parts per billion at the 90th percentile, DCWASA was required to comply with 40 C.F.R. § 141.80, and was required to implement a lead in drinking water public education program, and to initiate lead service line replacement at a rate of seven percent of the lead service line inventory per year.

11. On July 29, 2003, DCWASA reported that, during the compliance period January - June 2003, more than ten percent of the water samples tested exceeded the 15 ppb lead action level. The level of lead in first draw water samples from the 90th percentile of 104 residences was 40 ppb. Accordingly, DCWASA was required to continue its public education program and the lead service line replacement program.

12. On January 26, 2004, DCWASA submitted a final report to EPA Region III stating that, during the compliance period July - December 2003, more than ten percent of the water samples tested exceeded the 15 ppb lead action level. The level of lead in first draw water samples from the 90th percentile of 108 residences was 63 ppb. Accordingly, DCWASA was required to continue its public education program and the lead service line replacement program.

13. On March 31, 2004, as part of its compliance audit, EPA sent DCWASA an information request pursuant to Section 1445(a) of the SDWA, 42 U.S.C. § 300j-4(a). EPA also notified DCWASA of six potential areas of violation. DCWASA produced thousands of pages of electronic and paper documents in response to EPA's information request. DCWASA also responded orally and in writing to the six potential regulatory violations and other areas of potential violation identified by EPA after EPA had reviewed DCWASA's document production. EPA advised DCWASA that the documents provided by DCWASA in response to EPA's information request contained inconsistencies and omissions with respect to DCWASA's sampling plans and sampling data.

14. EPA sent a second information request pursuant to Section 1445(a) of the SDWA, 42 U.S.C. § 300j-4(a), to DCWASA on May 26, 2004 to clarify sampling data received in response to the earlier, March 31, 2004 information request. DCWASA produced information in response to this second information request on June 2, 2004.

15. Review of the electronic and hard copy documents provided by DCWASA in response to EPA's information requests revealed significant inconsistencies in the way that data was managed and reported.

16. On June 17, 2004, pursuant to Sections 1414(a)(2)(A), 1414(g), and 1445(a) of the SDWA, 42 U.S.C. §§ 300g-3(a)(2)(A), 300g-3(g) and 300j-4(a), DCWASA and EPA entered into an Administrative Order for Compliance on Consent ("June 17, 2004 or "AO"), Docket No. SDWA-03-2004-0259DS for violations of EPA's Lead and Copper Rule, 40 C.F.R. §§ 141.80-141.91. A copy of the June 17, 2004 AO is attached hereto as Exhibit A.

17. Among other things, the June 17, 2004 AO stated that, as of October 1, 2002, DCWASA had an initial inventory of approximately 23,071 "known or suspected" lead service lines (June 17, 2004 AO, Paragraph 14), and approximately 27,495 service lines made of "unknown" materials, some of which may contain lead (June 17, 2004 AO, Paragraph 15).

18. Among other things, in the June 17, 2004 AO, EPA stated that DCWASA had violated the SDWA and the Lead and Copper Rule by:

a. Failing to take the requisite number of samples pursuant to 40 C.F.R. §§ 141.86(c) & (d), within the monitoring period January – June 1999 (June 17, 2004 AO Paragraphs 19-21);

b. Failing to conduct adequate follow-up monitoring of partially replaced lead service lines pursuant to 40 C.F.R. § 141.84(d) (June 17, 2004 AO Paragraphs 22-28);

c. Failing to comply with requirements for public service announcements pursuant to 40 C.F.R. §§ 141.85 (June 17, 2004 AO Paragraphs 29-33);

d. Failing to use required language in written materials provided to customers pursuant to 40 C.F.R. § 141.85(c)(2)(i) (June 17, 2004 AO Paragraphs 34-35);

e. Failing to report certain information required by 40 C.F.R. §§ 141.90(a)(1)(i) & 141.90(a)(1)(v); (June 17, 2004 AO Paragraphs 36-46);

f. Failing to report the results of all samples taken and failing to report exceedance of the lead action level during the monitoring period July 2000 – June 2001 (June 17, 2004 AO Paragraphs 47–52); and

e. Failing to perform required activities following exceedance of the lead action level for the July 2000 – June 2001 monitoring period (June 17, 2004 AO Paragraphs 53-60).

19. In addition, the June 17, 2004 AO stated that, based on its review of the documents provided by DCWASA, EPA had concerns regarding the way DCWASA tracks, maintains, and records data related to its routine tap water sampling for lead and its lead service line sampling. Cf. 40 C.F.R. § 141.91.

20. Among other things, the June 17, 2004 AO required DCWASA to:

a. Submit to EPA and implement an approved plan and schedule for updating DCWASA's materials evaluation used for sampling and its inventory of lead service lines, including a plan for reporting the updated materials evaluation and lead service line inventory to EPA. The plan also was to include provisions for tracking full

and partial replacement of lead service lines after June 1, 2001, and for determining the constituent materials of service lines then identified as composed of "unknown" materials. The AO required DCWASA to report its initial updated materials evaluation to EPA by September 1, 2004 and annually thereafter. (June 17, 2004 AO, Paragraph 63);

b. Fully or partially physically replace at least a minimum number of lead service lines (June 17, 2004 AO, Paragraphs 65, 66, 80, 81, 82);

c. On the first day of each monitoring period until such time as DCWASA reported the 90th percentile lead level in its distribution system at or below the Lead and Copper Rule action level for two consecutive six month monitoring periods, provide to EPA for comment DCWASA's plan for conducting the sampling required by 40 C.F.R. § 141.86, including the address of each proposed sampling location, a description of how each sampling location satisfies the criteria for inclusion in the sampling pool pursuant to 40 C.F.R. § 141.86, and identification of sampling locations that were not sampled the previous monitoring period (June 17, 2004 AO Paragraph 75);

d. Submit to EPA and implement a plan for enhanced information, data base management, and reporting, including a system for tracking routine sampling information. The purpose of this requirement was, in part, to ensure that a sufficient number and type of sampling locations are utilized (June 17, 2004 AO Paragraph 76);

e. Submit certain information to EPA concerning the results of lead and copper sampling (June 17, 2004 AO Paragraph 77);

f. Comply with 40 C.F.R. § 141.90 as to all reports submitted to EPA pursuant to the June 17, 2004 AO and/or the Lead and Copper Rule (June 17, 2004 AO, Paragraph 78); and

g. Certify the accuracy and completeness of all reports submitted to EPA pursuant to the June 17, 2004 AO (June 17, 2004 AO, Paragraph 98).

21. EPA's purpose in requiring the actions described in the June 17, 2004 AO Paragraphs 63, 75, 76, 77, 78 and 98, was, in part, to improve DCWASA's data management so as to ensure that samples taken by DCWASA comply with the criteria set out in the Lead and Copper Rule, including but not limited to, the use of "tier 1" sampling locations for routine lead and copper monitoring pursuant to 40 C.F.R. § 141.86(a)(3). Another purpose was to address EPA's concerns regarding DCWASA's data management and reporting as noted in Paragraph 17 of the June 17, 2004 AO.

22. On January 13, 2005, DCWASA and EPA entered into a Supplemental Administrative Order for Compliance on Consent, Docket No. SDWA-03-2005-0025DS ("Supplemental AO"). The Supplemental AO addressed a separate violation of the Lead and Copper Rule, specifically, 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

because DCWASA utilized a sampling methodology that was not described in 40 C.F.R. § 141.86 (b)(3) for testing service lines. The Supplemental AO required, among other things, that DCWASA physically replace a certain number of lead service lines in addition to those required by the June 17, 2004 AO.

Count I

23. The allegations set forth in Paragraphs 1-22 above are incorporated by reference as if repeated and re-alleged herein.

24. Pursuant to 40 C.F.R. §§ 141.86(a)(3) & (c), DCWASA must collect at least one sample from 100 unique locations that qualify as "tier 1" locations during each monitoring period. Tier 1 locations are single family structures that either contain copper pipes with lead solder installed after 1982 or contain lead pipes and/or are served by a lead service line. 40 C.F.R. § 141.86(a)(3). These samples are utilized by DCWASA to calculate the drinking water distribution system's 90th percentile lead level pursuant to 40 C.F.R. § 141.80(c).

25. Pursuant to 40 C.F.R. § 141.90(a)(1)(i), DCWASA must report to EPA within ten days following the end of each applicable monitoring period, the results of all tap samples for lead and copper. DCWASA must include in its report the location of each sampling site and the criteria under which the site was selected for the sampling pool.

26. Pursuant to 40 CFR 141.86(f), EPA may invalidate a lead or copper tap water sample if, among other things, EPA learns that the sample was taken from a site that did not meet the site selection criteria of 40 CFR 141.86. For purposes of 40 CFR 141.86(f), the term "invalidate" means that the sample may not be counted to determine the lead or copper 90th percentile levels under 40 CFR 141.80(c)(3) or toward meeting the minimum monitoring requirements of 40 CFR 141.86(c).

27. Paragraph 77 of the June 17, 2004 AO required DCWASA to include in its reports submitted to EPA the following information for all tap samples regardless of whether the samples were taken to achieve minimum compliance with 40 C.F.R. § 141.86: (a) Sample ID number; (b) Sample date; (c) Sample location; (d) Lead concentration; (e) Copper concentration; (f) Service line materials; (g) Information identifying whether the sampling location complies with 40 C.F.R. § 141.86(a)(3) (i.e., is a Tier 1 location); (h) Identification of any sampling location that was not sampled in the preceding monitoring period; (i) Reasons for any deviation from the sample locations used during the preceding monitoring period; (j) Analysis date; and (k) If there is more than one sample from a specific sampling location, the reason for the duplicate sample.

28. Paragraph 78 of the June 17, 2004 AO required DCWASA to comply with 40 C.F.R. § 141.90.

29. Paragraph 98 of the June 17, 2004 AO required DCWASA to certify the accuracy and completeness of all reports submitted to EPA pursuant to the June 17, 2004 AO.

30. On January 3, 2006, DCWASA submitted to EPA its tap sampling report and 90th percentile lead level calculation for the July – December 2005 monitoring period ("January 3, 2006 report").

31. The January 3, 2006 report identified six addresses as tier 1 sampling locations, but failed to provide any evidence to support the tier 1 designation. The six addresses are:

xxxx L Street NE
xxxx Florida Avenue NE
xxxx Summit Avenue NE
xxxx Yuma Street NW
xxxx 19th Street NW
xxxx Monroe St NW

To ensure privacy, the streets on which the samples were taken are identified herein, but the street numbers of the individual residences are not provided. See 5 U.S.C. § 552(b)(6). An unredacted version of this Complaint has been filed under seal.

32. At the time it submitted its January 3, 2006 report, DCWASA had information that the six addresses described in Paragraph 31, *supra,* did not qualify as tier 1 locations, but failed to report that information to EPA.

33. DCWASA's representation in its January 3, 2006 report that the six addresses described in Paragraph 31 qualified as tier 1 locations violated 40 C.F.R. § 141.90(c), and the June 17, 2004 AO.

Count II

34. The allegations set forth in Paragraphs 1-33 above are incorporated by reference as if repeated and re-alleged herein.

35. In addition, the January 3, 2006 report identified seven addresses as qualifying as tier 1 sampling locations because they were served by full lead service lines. The addresses are:

xxxx Hemlock Street NW
xxxx L Street NE
xxxx Belmont Road NW
xxxx Volta Place NW
xxxx D Street NE
xxxx 8th Street NE

xxxx 9th Street NE

To ensure privacy, the streets on which the samples were taken are identified herein, but the street numbers of the individual residences are not provided. See 5 U.S.C. § 552(b)(6). An unredacted version of this Complaint has been filed under seal.

Of these seven addresses, however, two had full lead service line replacements prior to sampling for the July – December 2005 monitoring period, two addresses had partial lead service line replacements prior to sampling for the July – December 2005 monitoring period, and three addresses had been determined prior to sampling for the July – December 2005 monitoring period to be served by copper pipes.

36. At the time it submitted its January 3, 2006 report, DCWASA had information that the seven addresses described in Paragraph 35, supra were not served by full lead service lines, but failed to report that information to EPA.

37. DCWASA's representation in its January 3, 2006 report that the seven addresses described in Paragraph 35 were served by full lead service lines violated 40 C.F.R. § 141.90(c), and the June 17, 2004 AO.

Count III

38. The allegations set forth in Paragraphs 1-37 above are incorporated by reference as if repeated and re-alleged herein.

39. Upon exceeding the LCR lead action level, a water system "shall replace annually at least 7 percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead service lines in place at the time the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system, ... based on a materials evaluation ...." 40 C.F.R. § 141.84(b).

40. Pursuant to 40 C.F.R. §§ 141.84(g) & 141.90(e), DCWASA was required, among other things, to report annually to EPA until such time as the drinking water distribution system was below the Lead and Copper Rule's action level for lead for two consecutive six-month periods the number and location of each lead service line replaced during the previous year.

41. Paragraph 63 of the June 17, 2004 AO required DCWASA to submit to EPA and implement an approved plan and schedule for updating its materials evaluation used for sampling and its inventory of lead service lines, reporting the updated materials evaluation and lead service line inventory to EPA, and tracking service lines that were fully or partially replaced since June 1, 2001.

42. On September 30, 2005, DCWASA submitted its annual Lead Service Line Replacement Report ("2005 LSLR Report") for the time period October 2004 –

September 2005 pursuant to 40 C.F.R. §§ 141.84(g) & 141.90(e). On November 18, 2005, DCWASA submitted a supplement to the 2005 LSLR Report. The 2005 LSLR Report, including its supplement, failed to identify twelve locations at which DCWASA had performed a full or partial lead service line replacement between October 2004 and September 2005. Those addresses are:

xxxx Volta Place NW
xxxx Fairmont Street NW
xxxx Hamilton Street NW
xxxx Hoban Road NW
xxxx Garfield Street NW
xxxx 29th Street NW
xxxx 13th Street NW
xxxx Martin Luther King Jr Avenue SW
xxxx Quebec Street NW
xxxx 41st Street NW
xxxx Aspen Street NW
xxxx Harvard Street NW

To ensure privacy, the streets on which the samples were taken are identified herein, but the street numbers of the individual residences are not provided. See 5 U.S.C. § 552(b)(6). An unredacted version of this Complaint has been filed under seal.

43. DCWASA's failure to identify on its 2005 LSLR twelve locations at which DCWASA had performed a full or partial lead service line replacement between October 2004 and September 2005 violated 40 C.F.R. §§ 141.84(g) & 141.90(e) and the June 17, 2004 AO.

Count IV

44. The allegations set forth in Paragraphs 1-43 above are incorporated by reference as if repeated and re-alleged herein.

45. Pursuant to Paragraphs 81 and 82 of the June 17, 2004 AO, DCWASA was required to develop and submit to EPA for approval a prioritization plan for selecting a subset of at least 1000 specific lead service line replacement locations ("priority replacements"), and to replace the 1000 lead service lines identified by the prioritization plan between October 1, 2004 and September 30, 2006, regardless of whether during that time period the 90th percentile lead level in DCWASA's distribution system was below the LCR action level for two consecutive six-month monitoring periods.

46. As set forth in Paragraphs 19-21, *supra,* the June 17, 2004 AO also required improved data management and reporting to address confusion caused by inconsistencies among Lead and Copper Rule submissions generated and provided by DCWASA.

47. In the 2005 LSLR Report, DCWASA identified lead service line replacements that were considered "priority" replacements pursuant to Paragraphs 81 and 82 of the June 17, 2004 AO.

48. On May 9, 2006, DCWASA submitted to EPA a report identifying all "priority" lead service line replacements conducted pursuant to Paragraphs 81 and 82 of the June 17, 2004 AO ("May 9, 2006 Priority Replacement Report").

49. Certain aspects of the May 9, 2006 Priority Replacement Report are inconsistent with the 2005 LSLR Report.

a. The 2005 LSLR Report identifies fifteen addresses as "priority" replacements pursuant to Paragraphs 81 and 82 of the June 17, 2004 AO that are not identified on the May 9, 2006 Priority Replacement Report. The addresses are:

xxxx Morse Street NE
xxxx Adams Street NW
xxxx Longfellow Street NW
xxxx Rosemont Avenue NW
xxxx 17th Street NE
xxxx Hurst Terrace NW
xxxx Brothers Place SE
xxxx 16th Street NE
xxxx Harrison Street NW
xxxx 12th St NE
xxxx 10th Street NE
xxxx Lowell Street NW
xxxx 5th Street NE
xxxx Macarthur Boulevard NW
xxxx 19th Street NE

To ensure privacy, the streets on which the samples were taken are identified herein, but the street numbers of the individual residences are not provided. See 5 U.S.C. § 552(b)(6). An unredacted version of this Complaint has been filed under seal.

b. In addition, the May 9, 2006 Priority Replacement Report identifies six addresses that are not identified as "priority" replacements in the 2005 LSLR Report. These addresses are:

xxxx South Carolina Avenue SE
xxxx Hall Place NW
xxxx Woodley Place NW
xxxx NH Burroughs Avenue NE
xxxx 13th Street NW
xxxx F Street NE

To ensure privacy, the streets on which the samples were taken are identified herein, but the street numbers of the individual residences are not provided. See 5 U.S.C. § 552(b)(6). An unredacted version of this Complaint has been filed under seal.

50. In response to questions raised by EPA, DCWASA has explained that the fifteen addresses described in Paragraph 49(a) above satisfied the criteria for designation as "priority" service line replacements within the meaning of Paragraphs 81 and 82 of the June 17, 2004 AO. However, because DCWASA had replaced more than the required 1,000 "priority" service lines, DCWASA selected a subset of all replaced "priority" service lines for inclusion in its final report documenting compliance with Paragraphs 81 and 82 of the June 17, 2004 AO. As to the addresses described in Paragraph 49(b), DCWASA has acknowledged that those addresses were not identified as "priority" in the 2005 LSLR, but confirmed that the addresses in fact qualified as "priority."

51. The discrepancies between the 2005 LSLR and the May 9, 2006 Priority Replacement Report are the types of data management and reporting inconsistencies that portions of the June 17, 2004 AO were intended to address. Accordingly, DCWASA's failure to provide EPA with accurate information regarding the number and location of "priority" lead service line replacements pursuant to Paragraphs 81 and 82 violates the June 17, 2004 AO.

III. PROPOSED CIVIL PENALTY

52. The allegations set forth in Paragraphs 1-51 above are incorporated by reference as if repeated and re-alleged herein.

53. Under Section 1414(g)(3)of the Act, 42 U.S.C. § 300g-3(g)(3), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations which are assessed penalties under Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B) after March 15, 2004, subject the violator to civil penalties in an amount not to exceed $ 27,500 per proceeding.

54. Based on the foregoing findings of violation, and pursuant to the authority of Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), Complainant hereby proposes to issue an Order Assessing Administrative Penalties to the Respondent assessing a penalty in the amount of twenty-seven thousand, five hundred dollars ($27,500.00). The proposed administrative penalty has been determined in accordance with Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B). For purposes of determining the amount of any penalty to be assessed, EPA has taken into account the seriousness of the violations, the population at risk, and other appropriate factors. The proposed penalty does not constitute a demand as defined in 28 U.S.C. §§ 2412 *et seq.*

55. If warranted, Complainant may adjust the proposed civil penalty assessed in this Complaint. Complainant will consider any number of factors in making this adjustment, including Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent. In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

IV. SETTLEMENT CONFERENCE

56. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the SDWA. Whether or not a hearing is requested, the Respondent may request a settlement conference to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.**

57. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

58. If you wish to arrange a settlement conference or if you have any questions related to this proceeding, please contact the attorney assigned to this case, as indicated in Paragraph 64 following your receipt of this Complaint. **Once again, however, such a request for a settlement conference does not relieve the Respondent of the responsibility to file an Answer within 30 days following Respondent's receipt of this Complaint.**

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

59. As provided in section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), the Respondent has the right to a public hearing regarding this Complaint to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. At the hearing, Respondent may contest any material fact contained in the violations listed in Section III above, and the appropriateness of the proposed penalty amount.

60. Hearing procedures are described in the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits,* 40 C.F.R. Part 22, a copy of which is enclosed.

61. If the Respondent wishes to avoid being found in default, it must file a written Answer to this Complaint and a Request for Hearing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region III, within 30 (thirty) days of service of this Complaint. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint.

62. The Answer shall also state:

a. the circumstances or arguments that are alleged to constitute grounds of any defense;
b. the facts which Respondent disputes;
c. the basis for opposing any proposed relief; and
d. whether a hearing is requested.

Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.

63. The Answer must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

64. A copy of this Answer and any subsequent documents filed in this action should be sent to:

Stefania D. Shamet
Senior Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Ms. Shamet may be reached by telephone at (215) 814-2682 and by facsimile at (215) 814-2603.

65. If Respondent fails to file a written Answer and Request for a hearing within thirty (30) days of service of this Complaint, a Default Order may be issued. Upon issuance of a default judgment, the civil penalty proposed herein shall become due and payable. Respondent's failure to pay the entire penalty assessed by the default order by its due date may result in a civil action to collect the assessed penalty. In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and

handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

66. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. Part 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on any unpaid amount if it is not paid within thirty (30) calendar days of Respondent's receipt of notice of filing of an approved copy of an Order Assessing Administrative Penalties with the Regional Hearing Clerk. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. Part 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts. 40 C.F.R. Part 13.11(b). In addition, a penalty will be assessed on any portion of the debt which remains delinquent more than ninety (90) calendar days after payment is due. 40 C.F.R. Part 13.11(c). Should assessment of the penalty charge of the debt be required, it will be assessed as the first day payment is due pursuant to 4 C.F.R. Part 102.13(e). Furthermore, pursuant to EPA Resources Management Directives System, Chapter 9, EPA will assess a $15.00 handling charge for administrative costs on unpaid penalties for the first 30-day period after a payment is due and an additional $15.00 for each subsequent 30 days the penalty remains unpaid.

67. Neither assessment nor payment of an administrative civil penalty pursuant to Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), shall affect Respondent's continuing obligation to comply with the SDWA, any other Federal or State laws, and with any Compliance Order issued pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g).

VI. QUICK RESOLUTION

68. In accordance with 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's Prehearing Exchange. If Respondent pays the specific penalty proposed in this Complaint within 20 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

69. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Stefania D. Shamet (3RC20), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondent shall

pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

70. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

71. Payment of the penalty shall be made by sending a certified or cashier's check made payable to the Treasurer of the United States of America, in care of:

EPA Region III
Regional Hearing Clerk
P. O. Box 360515
Pittsburgh, PA 15251-6515

Copies of the check shall be mailed at the same time payment is made to: Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Stefania D. Shamet (3RC20), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

VII. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

72. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice, 40 C.F.R. Part 22, prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 8/23/06

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency
Region III