

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

	)	
IN THE MATTER OF	)	
	)	
District of Columbia Water and	)	
Sewer Authority	)	
5000 Overlook Avenue, SW	)	
Washington, DC 20032,	)	
	)	
Respondent.	)	ADMINISTRATIVE ORDER
	)	FOR COMPLIANCE ON CONSENT
Proceedings under Sections 1414(a)	)	Docket No. SDWA-03-2004-0259DS
and (g) and 1445(a) of the Safe	)	
Drinking Water Act, 42 U.S.C.	)	
§§300g-3(a) & (g) and 300j-4(a)	)	
	)	

I. STATUTORY AUTHORITY

1. This 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) and Section 1445(a) of the Safe Drinking Water Act (“SDWA” or “Act”), 42 U.S.C. §§ 300g-3(a)(2)(A), 300g-3(g) and 300j-4(a), and delegated to the Regional Administrator of 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.

II. FINDINGS

____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. 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.

5. DCWASA is a “public water system” that 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 a “community water system” within the meaning of 40 C.F.R. § 141.2.

6. 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.

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

8. 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.

9. 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.

The action level for lead is exceeded when the concentration of lead in more than ten percent of 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 returned to standard monitoring of tap samples, 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 and did 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 and did continue its public education program and the lead service line replacement program.

13. Upon exceeding the LCR action, 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). In a letter dated May 20, 2003, DCWASA reported to EPA that approximately 22,000 “known or suspected” lead service lines existed in the water distribution system. That number was based on an inventory conducted in 1990 and estimates of service lines that had been replaced since that date. An additional, undated letter indicated that DCWASA would complete an updated inventory of lead service lines by September 30, 2003. The “Report on the Materials Evaluation and Initial Inventory of the District of Columbia Water and Sewer Authority Lead Services,” dated September 2003, provided an updated inventory of 23,071 “known or suspected” lead service lines. Further investigation may reveal that some of these service lines are not, in fact, comprised of lead.

14. Based on an initial inventory of 23,071 “known or suspected” lead service lines, DCWASA was required to replace 1,615 lead service lines during the time period October 1, 2002 - September 30, 2003 to satisfy the requirement in 40 C.F.R. § 141.84(b) that at least seven percent of the initial number of lead service lines be replaced annually.

15. In addition to the identified lead service lines, DCWASA subsequently identified

approximately 27,495 service lines as being made of “unknown” materials. In the course of conducting tests for various other purposes, DCWASA has learned that some of the approximately 27,495 service lines listed as “unknown” may contain lead. For example, DCWASA’s March 17, 2004 plan for water sampling and testing included data from 146 service lines categorized as “unknown” that had lead levels greater than 15 ppb. At the same time, subsequent DCWASA tests have revealed that some of the 23,071 “known or suspected” lead service lines are made of materials other than lead. Accordingly, the initial inventory of lead service lines in the DCWASA distribution system as of October 1, 2002 may be some number other than 23,071.

16. On February 8, 2004, EPA commenced an extensive audit of DCWASA’s compliance with the Lead and Copper Rule, specifically focusing on 40 C.F.R. Sections 141.84, 141.85 and 141.90 for the years 1998 through the present (“compliance audit”). The compliance audit was expanded to include 40 C.F.R. § 141.86. The audit supplemented the self-reported compliance information submitted to EPA by DCWASA which generally provided summary reports of compliance actions at periodic intervals.

17. 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 has advised DCWASA that the documents provided by DCWASA to date in response to EPA’s information request contained inconsistencies and omissions with respect to DCWASA’s

sampling plans and sampling data. Based on its review of the documents provided by DCWASA, EPA has 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.

18. Representatives of EPA and DCWASA met on April 23, 2004 and May 10, 2004 to discuss the six potential regulatory violations and a number of additional potential regulatory violations that EPA raised during the course of its compliance audit. Representatives of EPA and DCWASA also participated in a conference call on May 24, 2004 to discuss these issues. In addition to meetings and telephone calls, DCWASA sent detailed letters to EPA on May 5, 2004, May 27, 2004 and June 11, 2004, providing responses to these issues. 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 responsive to this second information request on June 2, 2004. DCWASA is continuing to search for and produce documents responsive to both of EPA's information requests.

Failure to Take Samples Within the Monitoring Period

19. Title 40 C.F.R. §§ 141.86(c) & (d) set out the number and timing for taking tap water samples to comply with the LCR.

20. For the monitoring period January - June 1999, DCWASA reported taking 106 samples, for which they provided analyses for 81 sample locations. DCWASA later provided analyses for a total of 104 locations. Eleven of the 104 samples for which analyses were reported were taken on July 1 and July 2, after the close of the monitoring period on June 30, 1999 (Sample ID Nos. LC2Q99D1V23, LC2Q99D1V27, LC2Q99D1V45, LC2Q99D1V46,

LC2Q99D1V53, LC2Q99D1V62, LC2Q99D1V63, LC2Q99D1V67, LC2Q99D1V72, LC2Q99D1V73, and LC2Q99D1V86). Accordingly, based on the information provided by DCWASA, DCWASA reported taking 95 samples during the monitoring period, a deficit of 5 samples.

21. DCWASA did not comply with 40 C.F.R. §§ 141.86(c) and (d) for the monitoring period January - June 1999 because eleven of the samples it reported for purposes of compliance of the LCR for the period January - June 1999 were taken on July 1 and 2, 1999, after the close of the monitoring period on June 30, 1999.

Failure to Conduct Follow-up Monitoring of Partially Replaced Lead Service Lines

22. Based on an estimated total of 23,071 lead service lines, DCWASA was required to replace 1,615 lead service lines during the time period October 1, 2002 - September 30, 2003 to satisfy the requirement in 40 C.F.R. § 141.84(b) that at least seven percent of the initial number of lead service lines be replaced annually, either through physical replacement or by determining that the lead concentration in all service line samples from a particular line pursuant to 40 C.F.R. § 141.86(b)(3), is less than or equal to 15 ppb. *See* 40 C.F.R. §§ 141.84(b) & (c).

23. On September 30, 2003, EPA received a preliminary report from DCWASA regarding DCWASA's lead service line replacement program. The final report was received October 27, 2003. According to the final report, during the period October 1, 2002 - September 30, 2003, DCWASA reported that it had replaced 385 lead service lines through physical replacement and that it had replaced 1,241 lead service lines pursuant to 40 C.F.R. § 141.84(c), by determining through testing that water from those service lines did not exceed 15 ppb lead.

24. Of the 385 physically replaced lead service lines reported by DCWASA as of October 1, 2003, DCWASA reported 79 were "full" replacements, and 306 were "partial"

replacements. The term “lead service line” is defined as “a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.” See 40 C.F.R. § 141.2. A “partial” replacement means that something other than the entire length of the service line is replaced. See 40 C.F.R. § 141.84(d). Title 40 C.F.R. § 141.84 requires that a public water system replace the portion of the lead service line owned by the system, but does not require that the system bear the cost of replacing portions of the line that the system does not own.

25. Pursuant to 40 C.F.R. § 141.84(d), each partially replaced lead service line must be sampled within seventy-two hours of partial replacement of the service line. One purpose of this requirement is to ascertain the lead levels in the drinking water from the replaced lead service line. Title 40 C.F.R. § 141.86(b)(3) requires that this sample be collected after water has stood motionless in the partially replaced lead service line for at least six hours. Because the water must remain motionless in the lead service line for at least six hours prior to sampling, it is DCWASA’s general practice to leave a sampling bottle and instructions for the property owner to conduct follow-up sampling and to return within seventy-two hours to pick up the sample for analysis. See 40 C.F.R. § 141.86(b)(2). Because the specific six-hour period in which water remains motionless in the pipes (1) may differ from house to house, (2) is best known to and in the control of each individual property owner, and (3) may represent a time (such as first thing in the morning) at which it would be inconvenient to the property owner for DCWASA workers to collect the sample, EPA acknowledges DCWASA’s determination that requesting the property owner to take the sample represents the most practicable method for post-partial replacement sampling and involves the least inconvenience or disruption to the property owner. DCWASA’s general practice of leaving the sample bottle for the property owner also avoids any need for

DCWASA to shut off service or to leave the ground dug up after the partial replacement is complete in order to collect a sample directly from the lead service line itself.

26. Of the 306 lead service lines reported by DCWASA as partially replaced as of October 1, 2003, DCWASA has reported follow-up monitoring on samples received from customers with respect to 147 lead service lines. DCWASA reported that DCWASA followed its standard practice, and the property owners at the unsampled partially replaced lead service lines did not leave samples for DCWASA to pick up within the seventy-two hour period.

27. Between October 1, 2003 and March 4, 2004, DCWASA reported that it had replaced an additional 174 lead service lines. DCWASA did not report whether or how many of these replacements were “full” or “partial.” DCWASA reported that it had conducted follow up sampling on 55 partially replaced service lines using its general practice of having the property owners collect the samples. According to DCWASA, DCWASA followed its standard practice and the property owners at the unsampled 119 lead service lines did not leave samples for DCWASA to pick up within the seventy-two hour period.

28. DCWASA did not comply with the lead service line replacement sampling requirements of 40 C.F.R. § 141.84 (d)(1), because DCWASA did not conduct follow-up sampling within seventy-two hours after the completion of partial replacement of lead service lines.

Failure to Comply with Requirements for Public Service Announcements

29. Pursuant to 40 C.F.R. § 141.85(c)(2)(iv) and § 141.85(c)(3), upon exceeding the LCR action level, DCWASA was required to “submit the public service announcement in [40 C.F.R. § 141.85(b)] to at least five of the radio and television stations with the largest audiences that broadcast to the community” every six months for as long as the system exceeds the lead

action level.

30. The information required to be included in the public service announcements pursuant to 40 C.F.R. § 141.85(c)(2)(iv) and § 141.85(c)(3) is set forth in 40 C.F.R. § 141.85(b).

31. In the public service announcement prepared by DCWASA and submitted to local radio and television stations on October 30 and 31, 2002, DCWASA did not use the language set forth in 40 C.F.R. § 141.85(b), in that DCWASA's public service announcement referred to "*potential elevated* levels of lead" in the drinking water, in lieu of the phrase "*unhealthy* levels of lead" set forth in 40 C.F.R. § 141.85(b) (emphasis added). Accordingly, the public service announcement prepared by DCWASA and submitted to local radio and television stations on October 30 and 31, 2002 did not comply with 40 C.F.R. § 141.85(b).

32. In the public service announcement prepared by DCWASA and submitted to local radio and television stations on September 29, 2003, DCWASA did not use the language set forth in 40 C.F.R. § 141.85(b), in that DCWASA's public service announcement omitted Section 141.85(b)'s reference to "*unhealthy amounts of*" lead in the drinking water (emphasis added). Accordingly, the public service announcement prepared by DCWASA and submitted to local radio and television stations on September 29, 2003 did not comply with 40 C.F.R. § 141.85(b).

33. For the compliance period ending September 30, 2003, DCWASA submitted one public service announcement to local radio and television stations. Accordingly, DCWASA did not comply with 40 C.F.R. § 141.85(c)(3) because DCWASA did not submit public service announcements to at least five local radio and television stations every six months during the period ending September 30, 2003. The parties note that the public service announcements that DCWASA submitted to media outlets in 2002 were not aired or printed by those media outlets, and that DCWASA voluntarily purchased an advertisement in the *Washington Post* in

September 2003 to disseminate its public service announcement. DCWASA's *Washington Post* advertisement, however, did not contain the exact language set forth in 40 C.F.R. § 141.85.

DCWASA Did Not Use Required Language in Written Materials Provided to Customers

34. Pursuant to 40 C.F.R. § 141.85(c)(2)(i), DCWASA was required to place the following notice on each customer's water utility bill within sixty days of exceeding the lead action level and every twelve months thereafter: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION."

35. The notice placed by DCWASA on its customers' water bills on or about August 29, 2003, stated: "WASA'S WATER QUALITY IMPROVEMENT PROGRAMS INCLUDE SAMPLING FOR LEAD IN THE DRINKING WATER. SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS. LEAD CAN POSE A RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION." Thus, the notice placed by DCWASA on its customers' water bills on or about August 29, 2003, included the phrase "in their drinking water" in the first sentence, but omitted the phrase "in their drinking water" from the second sentence, and omitted the term "significant" from the third sentence. The notice therefore did not comply with 40 C.F.R. § 141.85(c)(2)(i).

Reporting

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

37. For the monitoring periods July - December 1998, January - June 1999, July 1999 - June 2000, July 2000 - June 2001, July 2001 - June 2002, January - June 2003, and July - December 2003, DCWASA's report submitted pursuant to 40 C.F.R. § 141.90(a)(1)(i) did not provide a description of the criteria under which each sampling site was selected for the sampling pool. Because DCWASA did not provide a description of the criteria under which each location was selected for the sampling pool, EPA cannot determine whether DCWASA's sampling pool was in compliance with 40 C.F.R. § 141.86(a)(3).

38. By not providing a description of the criteria under which each sampling site was selected for the sampling pool, DCWASA did not comply with 40 C.F.R. § 141.90(a)(1)(i) for the monitoring periods July - December 1998, January - June 1999, July 1999 - June 2000, July 2000 - June 2001, July 2001 - June 2002, January - June 2003, and July - December 2003.

39. Title 40 C.F.R. § 141.86(b)(4) provides:

A water system shall collect each first draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

40. Pursuant to 40 C.F.R. § 141.90(a)(1)(v), "[w]ith the exception of initial tap sampling ... the system shall designate [in its report required pursuant to § 141.90(a)(1)] any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed."

41. a. During the following monitoring periods, samples reported by DCWASA were collected from sites which were not sampled during the preceding monitoring period. In addition, in its reports submitted pursuant to Section 141.90(a)(1) for these monitoring periods, DCWASA did not designate locations which were not sampled during the preceding monitoring

period and did not provide an explanation of why different sampling locations were used: July - December 1998, January - June 1999, July 1999 - June 2000, July 2000 - June 2001, July 2001 - June 2002, and July - December 2003.

b. During the monitoring period January - June 2003, samples reported by DCWASA did not include all of the sampling locations utilized in the July 2001 - June 2002 monitoring period and included samples that were collected from locations that were not sampled during any earlier monitoring period in which 100 samples were to be taken (such as the January - June 1999 monitoring period). In addition, in its reports submitted pursuant to Section 141.90(a)(1) for the monitoring period January - June 2003, DCWASA did not designate the sampling locations that had not been sampled during any earlier monitoring period in which 100 samples were to be taken and did not provide an explanation of why different sampling locations were used.

42. By not identifying sites that were not sampled during the preceding sampling period and by not providing an explanation of why the sampling sites changed, DCWASA did not comply with 40 C.F.R. § 141.90(a)(1)(v) for the monitoring periods July - December 1998, January - June 1999, July 1999 - June 2000, July 2000 - June 2001, July 2001 - June 2002, January - June 2003, and July - December 2003.

43. Pursuant to 40 C.F.R. § 141.90(a), DCWASA was required to submit to EPA tap water monitoring for lead and copper within the first ten days following the end of the monitoring period. Although DCWASA informally notified EPA of its monitoring results on several occasions throughout and shortly after the conclusion of the monitoring periods, its final reports for three monitoring periods were several weeks late. For the monitoring period ending June 30, 2002, DCWASA submitted its formal report on tap water monitoring for lead and

copper on August 26, 2002 -- approximately six weeks late. For the monitoring period ending June 30, 2003, DCWASA submitted its formal report on tap water monitoring for lead and copper on July 30, 2003 -- approximately three weeks late. For the monitoring period ending December 31, 2003, DCWASA submitted its formal report on tap water monitoring for lead and copper on January 26, 2004 -- approximately two weeks late. Accordingly, DCWASA did not comply with 40 C.F.R. § 141.90(a) because DCWASA did not submit to EPA its formal report on tap water monitoring for lead and copper within the first ten days following the end of the aforementioned monitoring periods.

44. Pursuant to 40 C.F.R. § 141.90(f), DCWASA was required to send written documentation to EPA within ten days after conducting public education activities required by 40 C.F.R. § 141.85 by October 31, 2002. DCWASA submitted the required documentation to EPA on January 22, 2003 -- approximately ten weeks late. Accordingly, DCWASA did not comply with 40 C.F.R. § 141.90(f).

45. Pursuant to 40 C.F.R. § 141.90(e)(2) & (3), “[w]ithin 12 months after a system exceeds the lead action level ... and every 12 months thereafter,” the system shall submit a letter indicating that the system “has either ... [r]eplaced in the previous 12 months at least 7 percent of the initial lead service lines ... or ... [c]onducted sampling which demonstrates that the lead concentration in all service lines sampled from an individual line[s] ... is less than or equal to 0.015 mg/L.” The letter must report the number of lead service lines scheduled to be replaced during the previous year, the number and location of each lead service line replaced during the previous year, and the locations, methods and results of any lead service line sampling.

46. DCWASA’s letter to EPA pursuant to 40 C.F.R. § 141.90(e)(2) & (3) was due September 30, 2003. Although DCWASA provided EPA with several progress reports on its

lead service line replacement program throughout the compliance period (including shortly before the end of the compliance period), EPA did not receive DCWASA's formal letter pursuant to 40 C.F.R. § 141.90(e)(2) & (3) until October 27, 2003. Accordingly, DCWASA did not comply with 40 C.F.R. § 141.90(e)(2) & (3) because DCWASA did not submit its letter pursuant to 40 C.F.R. § 141.90(e)(2) & (3) within 12 months after DCWASA had exceeded the lead action level.

Failure to Report Samples and Action Level Exceedance

47. Pursuant to 40 C.F.R. § 141.90(g), the results of all samples taken during the monitoring period, including any samples taken in addition to the minimum number and frequency required by the LCR, shall be reported as part of the report required pursuant to 40 C.F.R. § 141.90(a).

48. Pursuant to 40 C.F.R. § 141.86(e), the results of all samples conducted in accordance with the sample collection procedures set forth in 40 C.F.R. § 141.86 during the monitoring period, including any samples taken in addition to the minimum number and frequency of samples required by the LCR, shall be included in making any determinations, including calculation of the 90th percentile lead level.

49. For the monitoring period July 2000 - June 2001, DCWASA reported taking 50 samples. However, of those 50 samples, two samples were samples taken from a previously sampled location. Sample ID Nos. 00081276 and 00100185 were taken at the same address on August 29, 2000 and September 30, 2000, respectively; and Sample ID Nos. 00090037 and 00100191 were taken at the same address on September 1, 2000 and September 30, 2000, respectively. Thus, DCWASA reported taking samples from only 48 unique sampling locations. For the monitoring period July 2000 - June 2001, five of the reported samples (ID Nos.

LC3Q00D1V32, LC3Q00D1V33, LC3Q00D2V36, LC3Q00D1V48, and LC3Q00D1V52) were taken outside the June - September period required by 40 C.F.R. § 141.86(d)(4)(iv).

50. For the monitoring period July 2000 - June 2001, DCWASA did not report the following six samples: 0106122-001 (44 ppb lead), 0106233-007 (35 ppb lead), 0106140-001 (36 ppb lead), 0106140-005 (72 ppb lead), 0106140-007, (31 ppb lead), and 00090924 (113 ppb lead). Accordingly, for the monitoring period July 2000 - June 2001, DCWASA did not comply with 40 C.F.R. 40 C.F.R. § 141.90 because DCWASA did not report all samples taken.

51. For the monitoring period July 2000 - June 2001, DCWASA did not include the six unreported samples described in Paragraph 50 in DCWASA's calculation for the 90th percentile lead level. Accordingly, for the monitoring period July 2000 - June 2001, DCWASA did not comply with 40 C.F.R. § 141.86(e).

52. If DCWASA had included the six unreported samples described in Paragraph 50 in its calculation for the 90th percentile lead for the monitoring period July 2000 - June 2001, DCWASA would have exceeded the LCR's lead action level of 15 ppb at the 90th percentile for the July 2000 - June 2001 monitoring period. DCWASA did not report to EPA that DCWASA had exceeded the LCR action level of 15 ppb at the 90th percentile for the monitoring period July 2000 - June 2001, as required by 40 C.F.R. § 141.90(a)(iv).

DCWASA Did Not Perform Required Activities Following Exceedance of the Lead Action Level in the July 2000 - June 2001 Monitoring Period

53. Pursuant to 40 C.F.R. §§ 141.80(f) and 141.84, when a system exceeds the lead action level of 15 ppb, the LCR requires, among other things, the system to replace at least seven percent of its initial inventory of lead service lines per year.

54. DCWASA did not replace at least seven percent of its initial inventory of lead service lines in the twelve month period following the July 2000 - June 2001 monitoring period. Accordingly, DCWASA did not comply with 40 C.F.R. §§ 141.80(f) and 141.84.

55. Pursuant to 40 C.F.R. § 141.90(e)(2) & (3), “[w]ithin 12 months after a system exceeds the lead action level ... and every 12 months thereafter,” the system shall submit a letter reporting the number of lead service lines scheduled to be replaced during the previous year, the number and location of each lead service line replaced during the previous year, and the locations, methods and results of any lead service line sampling. DCWASA did not provide the letter required by 40 C.F.R. § 141.90(e)(2) & (3) within twelve months following the July 2000 - June 2001 monitoring period. Accordingly, DCWASA did not comply with 40 C.F.R. § 141.90(e)(2) & (3).

56. When a system exceeds the lead action level of 15 ppb, the LCR requires, among other things, the system to conduct the public education activities described in 40 C.F.R. § 141.85(c)(2) (i), (ii) & (iii) and (3) within sixty days and then every twelve months thereafter.

57. DCWASA did not conduct the public education activities described in 40 C.F.R. § 141.85(c)(2)(i), (ii) & (iii) and (3) within sixty days after the monitoring period July 2000 - 2001. Accordingly, DCWASA did not comply with 40 C.F.R. § 141.85(c)(2) (i), (ii) & (iii) and (3).

58. When a system exceeds the lead action level of 15 ppb, the LCR requires, among other things, the system to conduct the public education activities described in 40 C.F.R. § 141.85(c)(2)(iv) within sixty days and then every six months thereafter.

59. DCWASA did not conduct the public service announcement activities described in 40 C.F.R. § 141.85(c)(2)(iv), within 60 days after the monitoring period July 2000 - June 2001

and six months thereafter. Accordingly, DCWASA did not comply with 40 C.F.R. § 141.85(c)(2)(iv).

60. Pursuant to 40 C.F.R. § 141.155(c), DCWASA is required to submit a certification to EPA that its consumer confidence report had been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to EPA. That certification is due within three months of the date the system is required to distribute the report. DCWASA was required to distribute the Consumer Confidence Report for the calendar year 2002 by July 1, 2003, and submit a certification to EPA by October 1, 2003. DCWASA did not submit a certification for its Consumer Confidence Report for calendar year 2002.

Failure to Report Noncompliance with the NPDWR

61. Title 40 C.F.R. § 141.201 requires DCWASA to provide public notification of its noncompliance with 40 C.F.R. Part 141. DCWASA did not comply with 40 C.F.R. § 141.201 because DCWASA did not notify the public of the noncompliances with 40 C.F.R. Part 141 alleged in Paragraphs 19 - 60 herein.

62. Title 40 C.F.R. § 141.201(c)(3) requires DCWASA to submit to EPA copies of all public notices which it issues pursuant to 40 C.F.R. § 141.201. DCWASA did not comply with 40 C.F.R. § 141.201(c)(3) because DCWASA did not submit to EPA copies of all notices of the noncompliances alleged in Paragraphs 19 - 60 herein.

III. ORDER

Therefore, this _____ day of June, 2004, pursuant to Sections 1414(a)(2)(A), 1414(g), and 1445(a) of the Act, 42 U.S.C. §§ 300g-3(a)(2)(A), 300g-3(g) and 300j-4(a), DCWASA agrees to and is hereby ORDERED to conduct the following activities:

63. Within forty-five (45) days of executing this Order, DCWASA shall submit to EPA for approval a plan and schedule for updating its materials evaluation used for sampling and its inventory of lead service lines and reporting the updated materials evaluation and lead service line inventory to EPA. DCWASA's initial updating of its materials evaluation and inventory of lead service lines shall be reported to EPA by September 1, 2004. Thereafter, DCWASA shall implement its approved plan and schedule for updating its materials evaluation and lead service line inventory and provide EPA with an updated materials evaluation and inventory annually each September 1 until DCWASA has completely implemented its plan and schedule.

DCWASA's plan shall include a strategy and timetable for identifying the constituent materials in the approximately 27,495 service lines currently listed as of "unknown" content and provide for quarterly progress reports to EPA. DCWASA's plan shall also include a plan for revising the estimate of the initial number of lead service lines in the DCWASA distribution system as of June 30, 2001, taking into account identification of the constituent materials in the service lines currently listed as "unknown" and any corrections to the initial identification of "known or suspected" lead service lines. In addition, the plan shall include a method for tracking lead service lines that have been fully or partially replaced since June 30, 2001.

64. No later than September 30, 2004 and every September 30 thereafter until such time as DCWASA has fully implemented the plan and schedule for updating its materials evaluation and lead service line inventory as described in Paragraph 63 or until such time as the 90th percentile lead level in DCWASA's distribution system is below the LCR action level for two consecutive six-month monitoring periods, whichever is earlier, DCWASA shall recalculate the minimum number of lead service lines to be replaced annually pursuant to 40 C.F.R. § 141.84(b), and report the recalculated minimum number of lead service lines to EPA. This

recalculation shall use the updated materials evaluation and inventory of lead service lines prepared the preceding September 1 and described in Paragraph 63 to calculate the number of lead service lines to be replaced; provided, however, that DCWASA may not reduce its calculation of the initial number of lead service lines in the DCWASA distribution system by subtracting out lead service lines that were replaced after June 30, 2001.

65. Beginning in the period October 1, 2004 - September 30, 2005 and for each twelve month period thereafter until the 90th percentile lead level in DCWASA's distribution system is below the LCR action level for two consecutive six-month monitoring periods, DCWASA shall comply with 40 C.F.R. § 141.84 by replacing at a minimum the number of lead service lines calculated pursuant to Paragraph 64.

66. In addition to replacing the number of lead service lines calculated pursuant to Paragraph 64, during the period October 1, 2004 - September 30, 2006, DCWASA shall replace an additional 1,615 lead service lines, representing seven percent of the identified lead service line inventory as of the July 1, 2000 - June 30, 2001 monitoring period. The number of lead service lines to be replaced pursuant to this Paragraph shall be replaced regardless of whether during the time period October 1, 2004 through September 30, 2006, the 90th percentile lead level in DCWASA's distribution system is below the LCR action level for two consecutive six-month monitoring periods.

67. Within thirty (30) days of executing this Order, DCWASA shall submit to EPA for its review and approval a plan to obtain follow up sampling pursuant to 40 C.F.R. § 141.84(d) after partial replacement of a lead service line. The plan shall include all reasonably feasible measures to obtain the follow up sample within seventy-two (72) hours. The plan also shall describe actions that DCWASA will take to obtain follow up sampling as quickly as possible

after replacement of the lead service line if the property owner fails to leave a sample within the seventy-two (72) hour period.

68. Until such time as the 90th percentile lead level in DCWASA's distribution system is below the LCR action level for two consecutive six-month monitoring periods, DCWASA shall report to EPA on the tenth day of each month the results of any post-replacement sampling received by DCWASA during the preceding month, including the date the service line was replaced and the date the sample was taken. *See* 40 C.F.R. 141.90(e)(4).

69. Within ninety (90) days of EPA's approval of the plan submitted pursuant to Paragraph 67, DCWASA shall implement the approved plan described in Paragraph 67 to conduct lead service line sampling pursuant to 40 C.F.R. § 141.86 at all locations where lead service lines have been partially replaced since July 1, 2002 as part of DCWASA's lead service line replacement program and for which no sample has been collected following service line replacement. Within three (3) days of receiving the sampling results from the laboratory, DCWASA shall provide the results of the sampling required by this Paragraph to the property owner, EPA, and the District of Columbia Department of Health ("DOH"). As to each sample, DCWASA also shall provide EPA and DOH with the number of days between completion of line replacement and the sampling.

70. Within 30 days of executing this Order, DCWASA shall submit to EPA for its review and comment a public education plan regarding the system-wide and specific issues, including but not limited to potential public health issues, posed by the presence of lead in drinking water, and the steps that users of drinking water provided by DCWASA can take to minimize the health risk of lead in drinking water, such as flushing. DCWASA's plan shall address EPA's recommendations contained in its April 30, 2004 report on the effectiveness of

prior public education efforts on lead. *See* Attachment A hereto.

71. In any public education materials that are required by 40 C.F.R. § 141.85, said materials shall incorporate the exact language set forth in 40 C.F.R. § 141.85(b) and § 141.85(c). DCWASA shall not omit the language set forth in 40 C.F.R. § 141.85(b) and § 141.85(c) unless DCWASA receives prior written approval by EPA. To the extent DCWASA includes in the public education materials required by 40 C.F.R. § 141.85 information in addition to the mandatory language, the plan described in Paragraph 70 shall provide for a reasonable opportunity (no less than ten (10) business days) for EPA to review and comment on the additional language.

72. For the remainder of 2004 and for 2005, DCWASA shall conduct public education tasks pursuant to 40 C.F.R. § 141.85 and reporting to EPA pursuant to 40 C.F.R. § 141.90 pursuant to the schedule provided in Attachment B.

73. Commencing September 30, 2005 and each September 30 thereafter until such time as the 90th percentile lead level in DCWASA's distribution system is below the LCR action level for two consecutive six-month monitoring periods, DCWASA shall submit for EPA's review and approval a calendar for the next twelve months for reporting compliance with 40 C.F.R. §§ 141.80(c), 141.84, 141.85, 141.86 and 141.90 similar to the one in Attachment B.

74. Upon approval by EPA, each calendar event described in Paragraph 73 shall be incorporated into this Order by reference.

75. No later than July 1, 2004, and on the first day of each monitoring period until such time as the 90th percentile lead level in DCWASA's distribution system is below the LCR action level for two consecutive six-month monitoring periods, DCWASA shall submit to EPA for comment DCWASA's plan for conducting the sampling required by 40 C.F.R. § 141.86. The

plan shall include the address of each proposed sampling location and how each sampling location satisfies the criteria for inclusion in the sampling pool pursuant to 40 C.F.R. § 141.86, identify any sampling location utilized during the preceding monitoring period to which DCWASA does not plan to return and explain why DCWASA is not returning to that sampling location, and identify any sampling location that was not sampled during the preceding monitoring period.

76. Within sixty (60) days of the date of this Order, DCWASA shall submit to EPA for comment a plan and schedule for enhanced information, data base management, and reporting. The plan shall describe how DCWASA will track information regarding routine tap sampling for lead and copper sampling and lead service line sampling, including how DCWASA will ensure that: (1) a sufficient number and type of sampling locations are utilized; (2) all of the results of DCWASA's lead sampling will be recorded and maintained pursuant to 40 C.F.R. § 141.91; and (3) reports will be generated and timely submitted to EPA.

77. All tap sampling commencing with the monitoring period July 2004 - December 2004 shall be reported to EPA in both hard copy and electronic format. Reports submitted to EPA for tap samples shall include the following information for all 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 (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. Reports shall include copies of the laboratory data (lab sheets).

78. All reports submitted to EPA by DCWASA pursuant to the LCR or this Order shall comply with 40 C.F.R. § 141.90.

79. DCWASA shall issue a public notification of this Order and the matters herein pursuant to 40 C.F.R. § 141.201 and provide copies of all such notices to EPA.

IV. ADDITIONAL IMPLEMENTATION

In addition to the foregoing and in settlement of the findings set forth in Section II herein, DCWASA agrees to perform the following activities:

80. During the period October 1, 2004 - September 30, 2006, replacement of lead service lines by DCWASA pursuant to 40 C.F.R. § 141.84(b) or this Order shall consist of the physical replacement of lead service lines, rather than constructive replacement pursuant to 40 C.F.R. § 141.84(c).

81. Within forty-five (45) days of executing this Order, DCWASA shall submit to EPA for its review and approval a prioritization plan for selecting a subset of at least 1000 specific lead service line replacement locations from among the lead service lines that are required to be replaced for the period October 1, 2004 - September 30, 2006 pursuant to this Order and pursuant to 40 C.F.R. 141.84. The prioritization plan shall include documentation that DCWASA has consulted with the District of Columbia Department of Health in developing its plan for prioritization.

82. WASA shall replace the 1000 lead service lines identified by the prioritization plan described in Paragraph 81 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 is below the LCR action level for two consecutive six-month monitoring periods. The lead

service line replacements that are described in this Paragraph may be counted toward the total number of lead service lines that DCWASA is required to replace between October 1, 2004 and September 30, 2006 pursuant to 40 C.F.R. § 141.84 and this Order. With respect to the 1000 lead service line replacements that are the subject of this Paragraph, said replacements shall be “full” replacements to the extent that DCWASA owns the entirety of the line, “full” replacements where the customer agrees to pay for the replacement of the portion of the line not owned by WASA, and partial replacements to the property boundary where the customer does not agree to pay for and consent to DCWASA’s replacement of the portion of the line on his/her property. DCWASA shall exercise best efforts to obtain the consent of the property owners to allow DCWASA to replace the “full” lead service line at the property owner’s expense.

83. Within forty-five (45) days of executing this Order, DCWASA shall submit to EPA for its review and approval a plan for encouraging homeowners to consent to full replacement of lead service lines. “Full replacement” means that both the portion of the lead service line that is owned by DCWASA and that portion of the lead service line that is not owned by DCWASA would be replaced, with the property owner bearing the cost for replacing the portion of the service line not owned by DCWASA.

84. Within thirty (30) days of executing this Order, WASA shall submit to EPA documentation demonstrating that DCWASA has supplied, at no additional cost to the customer, pursuant to its current program, point-of-use devices (water filters) to all addresses contained on DCWASA’s list of 23,071 “known or suspected” lead service lines. DCWASA must identify the filters that it has/will distribute, and the filters must be certified to remove lead up to at least 0.150 mg/L (150 ppb) by an independent testing organization, such as the NSF International or the California Department of Health Services. In addition, within thirty (30) days of executing

this Order, DCWASA shall submit to EPA for approval a plan and schedule for: (1) continuing its current program of providing a water filter to any address with a service line identified as “unknown” whose tap water sample exceeds 15 ppb on the second draw sample; and (2) providing replacement filters or filter cartridges consistent with the certified maintenance or replacement schedule. DCWASA shall continue to provide filters and/or replacement filter cartridges to all recipients of water filters on a schedule consistent with the certified maintenance or replacement schedule to the persons identified in this Paragraph until such time as the 90th percentile lead level in DCWASA’s distribution system is below the LCR action level for two consecutive six-month monitoring periods.

85. DCWASA shall provide customers with sampling results from their taps within three (3) days of receiving results from the laboratory. *Cf.* 40 C.F.R. § 141.84(d)(1). In all cases, DCWASA shall exercise best efforts to provide customers with sampling results from their taps within 30 days of taking the sample. Mailed results post-marked within three business days of receiving the results shall be considered timely.

V. RIGHT OF ENTRY

86. EPA and its authorized representatives, including contractors, shall have authority upon the presentation of proper identification to enter the premises of Respondent at any time without prior notification to monitor the activities required by this Order, verify any data or information submitted pursuant to this Order, obtain samples, and inspect and review any records generated and/or maintained pursuant to this Order. EPA reserves and does not waive all existing inspection and information request authority.

VI. GENERAL PROVISIONS

87. Respondent DCWASA shall fully implement each item of any plan approved by EPA under this Order in accordance with any schedule approved by EPA under this Order. Failure to fully implement all approved plans in connection with this Order in the manner and time period therein shall be deemed a violation of this Order.

88. The Parties recognize that some of the activities described in this Order that DCWASA agrees to undertake in settlement are not specifically described in the LCR, 40 C.F.R. §§ 141.80-.91.

Force Majeure

89. The Parties recognize that implementation of one or more of the activities set forth in this Order may require DCWASA to obtain approvals, permits or some other form of authorization from property owners or local and/or federal agencies other than EPA (such as authorizations from the District of Columbia for street closings and other activities necessary to physically replace a lead service line). DCWASA shall take all reasonable steps to secure the requisite approvals, permits or other authorizations necessary to implement all activities set forth in this Order. In the event that a required approval, permit or other authorization is denied, DCWASA shall notify EPA immediately in writing.

90. When DCWASA knows or should have known, by the exercise of due diligence, of an event that might delay completion of any requirement of this Order, whether or not the event is a Force Majeur event, DCWASA shall notify EPA, in writing, within ten (10) business days after DCWASA first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice shall indicate whether DCWASA claims that the delay should be excused due to a Force Majeure event. The notice shall describe in detail the

basis for DCWASA's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, the timetable by which those measures will be implemented, and an estimate of when the event might be resolved, if at all. DCWASA shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify EPA shall render Paragraph 91 void and of no effect as to the event in question, and shall be a waiver of DCWASA's right to obtain an extension of time for its obligations based on such event.

91. If a delay in performance is, or was, caused by a Force Majeure event, EPA shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Paragraphs 95 and 96 shall apply. DCWASA shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

92. "Force Majeure" for the purposes of this Order is defined as an event arising from causes beyond the control of DCWASA or the control of any entity controlled by DCWASA, including but not limited to DCWASA's agents, consultants and contractors, which delays or prevents the performance of any obligation under this Order. DCWASA's unanticipated or increased costs or expenses associated with implementation of this Order and changed financial circumstances shall not, in any event, be considered Force Majeure events. In addition, the failure of DCWASA or any entity controlled by DCWASA to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Order, or failure of DCWASA or any entity controlled by DCWASA to obtain or approve contracts, shall not, in any event, be considered

Force Majeure events.

Anti-Deficiency Act Events

93. Nothing in this Order shall be construed to require an expenditure, obligation or contract in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, *et seq.* Where an expenditure, obligation or contract is subject to either the Anti-Deficiency Act, DCWASA's obligations shall be subject to the availability of appropriated funds to the extent described below:

(a) DCWASA must initially identify the portion of its budget that is composed of appropriated funds, identify the other components of its funding, and demonstrate why the unavailability of the appropriated funds will delay specific obligations;

(b) To the extent made necessary by lack of appropriated funds, DCWASA may obtain deferral of compliance with an obligation of this Order until its next annual budget cycle if, within sixty (60) days after the date DCWASA knew or should have known of the event described in paragraph (b)(iv) below, it provides in writing to EPA a statement which shows the following:

(i) That pursuant to D.C. Code § 1-204.45a, it included in its annual budget, which accompanies the District of Columbia budget submitted to the President for transmission to the Congress pursuant to Section 446 of the D.C. Self-Government and Governmental Reorganization Act, D.C. Official Code § 1-206.46, sufficient money to carry out such obligation;

(ii) That it made diligent efforts to obtain Congressional enactment of that part of the budget act;

(iii) That it expressly identified in the annual fiscal year adopted budget prepared for Congressional use such obligation (not necessarily to include reference to this Order as such) together with the amount of money tied to performing such obligation;

(iv) That Congress acted expressly to eliminate such amount of money or to reduce it below the level necessary to perform the obligation, or that Congress made an across the board reduction in DCWASA's appropriation as shown in DCWASA's adopted budget without expressly saving such obligation and the across the board reduction, as applied proportionately to the amount of money shown in the adopted budget for such obligation, left an insufficient amount to carry out that obligation;

(v) That DCWASA has complied in a timely manner with all requirements of the District Anti-Deficiency Act of 2002, D.C. Code § 47-355.01, *et seq.*, with respect to the obligation.

EPA Approval, Disapproval, Comment on and Modification of Plans Submitted Pursuant to This Order

94. With respect to any plan and/or schedule submitted for approval to EPA pursuant to this Order, EPA may approve, disapprove, modify and/or comment. EPA's approval shall not be unreasonably withheld and any comment, disapproval and/or modification by EPA shall be reasonable. EPA will notify DCWASA in writing of any disapproval, modification or comments and provide an explanation of the reasons for such disapproval, modification or comment and a proposed alternative approach to address the issue. DCWASA shall, within twenty-one (21) days of receiving EPA's disapproval, modification or comments, either: (a) accept EPA's disapproval, modification and/or comment and submit a revised plan or schedule that addresses EPA's disapproval, modification or comments; or (b) advise EPA that it is invoking the dispute resolution provisions in Paragraphs 95-96.

95. If either DCWASA or EPA believes it has a dispute with respect to this Order with the other party it shall, within twenty-one (21) days of the circumstances giving rise to the dispute, serve upon the other party a notice, in writing, setting forth the matter(s) in dispute. The parties shall then attempt to resolve such dispute through informal negotiations, which informal negotiation period shall last no longer than fourteen (14) days. If the dispute cannot be resolved by the parties through the informal negotiation process, then within fourteen (14) days of the failure to resolve the dispute by informal negotiations, DCWASA or EPA may invoke formal dispute resolution by serving on the other party a written Statement of Position. The Statement of Position shall set forth the nature of the dispute with a proposal for its resolution as well as any factual data, analysis or opinion supporting that position and any supporting documentation relied upon. The other party may, within twenty-one (21) days of receipt of this petition, serve its Statement of Position with an alternate proposal for resolution as well as any factual data, analysis, or opinion supporting that position and all supporting documentation. Within ten (10) days after receipt of the opposing party's Statement of Position, the requesting party may serve a Reply. In any such dispute invoked by DCWASA, DCWASA shall have the burden of proof.

96. Following completion of the statements described in Paragraph 95, a final decision shall be issued by the Deputy Regional Administrator, EPA Region III. The Deputy Regional Administrator's decision shall be binding on DCWASA.

97. Upon approval of any plan and/or schedule, DCWASA shall implement the plan and/or schedule as approved or modified by EPA and the approved plan and/or schedule shall be incorporated into this Order by reference.

Submittal and Certification of Reports

98. 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.”

99. 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

100. 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

Effect of this Order

 101. 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.

102. 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. Except as provided in Paragraph 101, issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the SDWA.

103. Violation of any term of this Administrative 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).

104. This Administrative Order in no way relieves DCWASA of the duty to comply with any federal, state or local law, regulation, ordinance or permit. Compliance with this Administrative Order shall be no defense to any action commenced pursuant to such authorities, nor shall it be construed, except as set forth in Paragraph 101, 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.

105. 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.

106. 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 Regional Administrator, then the entire Order shall be null and void.

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

108. 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.

109. 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 subject only to ratification hereof by DCWASA's Board of Directors.

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

FOR THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY:

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

Date

SO ORDERED, this _____ day of June, 2004.

Donald S. Welsh
Regional Administrator
United States Environmental Protection Agency
Region III