

IN THE MATTER OF

ADMINISTRATIVE
CONSENT ORDER

Trenton Water Works
Trenton City/ Mercer County

EA ID #NEA180002 - 1111001

This Administrative Consent Order (ACO) is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("Department") by N.J.S.A. 13:1D-1 et seq., the Safe Drinking Water Act (N.J.S.A. 58:12A-1 et seq.), the Safe Drinking Water Act regulations (N.J.A.C. 7:10-1 et seq.), the National Primary Drinking Water Regulations (40 CFR 141 et seq.), and duly delegated to the Chief of Central Bureau of Water Compliance and Enforcement pursuant to N.J.S.A.13:1B-4.

FINDINGS

1. The City of Trenton owns and operates the facility known as Trenton Water Works (hereinafter "TWW"), a public water system, as defined by N.J.A.C. 7:10-1.3, which has the Public Water System Identification No. 1111001 and located in the City of Trenton, New Jersey. The system is considered a large water system because it serves more than 50,000 people. See 40 C.F.R. § 141.2.
2. The New Jersey Safe Drinking Water regulations, specifically N.J.A.C. 7:10-5.1, -5.2(a)(9), incorporate by reference, the Lead and Copper Rule at 40 C.F.R. § 141.80 et seq.

Water Quality Parameter Monitoring

3. TWW's corrosion control treatment was deemed optimized; and therefore, optimal water quality parameters ('WQP') were established by the Department in a letter dated October 14, 1997. After a water system's corrosion control treatment is optimized and optimal WQPs are established, the water system must monitor for optimal WQPs at the frequency specified in 40 C.F.R. § 141.87 and report the results in accordance with N.J.A.C. 7:10-5.4(a). For the July 1, 2016-December 31, 2016 monitoring period (2nd half of 2016), the January 1, 2017-June 30, 2017 monitoring period (1st half of 2017), and the July 1, 2017-December 31, 2017 monitoring period (2nd half of 2017) TWW submitted the results for pH and Alkalinity late. In addition, for the July 1, 2017-December 31, 2017 monitoring period (2nd half of 2017) TWW took forty-nine of the fifty required distribution system samples for alkalinity failing to take the last sample in the appropriate monitoring period. On January 27, 2017, July 24, 2017, and January 25, 2018, the Department issued a Notice of Non-Compliance ("NONC") for these failures and directed TWW to monitor and submit results for the WQPs of pH and Alkalinity.

Lead Action Level Exceedances

4. A Lead Action Level Exceedance triggers certain monitoring, treatment and public education requirements. See 40 C.F.R. § 141.2. Pursuant to 40 C.F.R. § 141.80(c), the lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period is greater than 0.015 mg/L (i.e. if the 90th percentile lead level is greater than 0.015 mg/L). For the monitoring period of January 1, 2017- June 30, 2017 (1st half of 2017), TWW had a Lead Action Level Exceedance. Based on the 102 sampling results for the monitoring period of January 1, 2018- June 30, 2018 (1st half of 2018), TWW has another Lead Action Level Exceedance.
5. Because of the Lead Action Level Exceedance during the 1st half of 2017, the Department issued a NONC on August 21, 2017. The NONC notified TWW of the Lead Action Level Exceedance and directed TWW to: 1) continue optimal and follow-up WQP monitoring; 2) conduct source water monitoring for lead and copper and submit a source water treatment recommendation by December 30, 2017; 3) submit an optimal corrosion control treatment recommendation by December 30, 2017; 4) immediately commence lead service line (“LSL”) replacement and submit a LSL inventory and replacement schedule within 60 days; 5) conduct public education; 6) submit a public education certification form; 7) provide a Lead Consumer Notice for those who collected tap samples for Lead monitoring; and 8) continue standard monitoring for lead and copper.

Corrosion Control Treatment

6. Pursuant to 40 C.F.R. § 141.81(b)(3)(v), (e)(2), a public water system that exceeds the lead or copper action level must submit a recommendation regarding optimal corrosion control treatment to the Department within six months after the end of the monitoring period during which it exceeded the action level.
 - a. The August 21, 2017 NONC required TWW to provide the Department with an optimal corrosion control recommendation by December 30, 2017. TWW failed to meet this deadline. On January 30, 2018, the Department issued a NONC that notified TWW of this violation and directed it to submit the recommendation within 15 days. TWW did not submit the recommendation until March 29, 2018. TWW recommended conducting corrosion control treatment studies, including conducting Desktop and Water Quality Analyses.
7. On April 20, 2018, the Department directed TWW, via letter, to perform the corrosion control studies, including the Desktop and Water Quality Analyses in response to TWW’s March 29, 2018 recommendation submittal. Pursuant to 40 C.F.R. § 141.81(b)(3)(v), (e)(3), where the State directs the water system to perform corrosion control studies, the water system shall perform and complete such studies within 18 months after the State requires such studies. Because TWW failed to submit a timely

corrosion control recommendation, the Department required TWW to conduct the studies and submit an optimal corrosion control treatment recommendation by July 31, 2019.

Source Water Monitoring and Treatment

8. Pursuant to 40 C.F.R. §§ 141.83(a) and 141.88, source water sampling from each entry point to the distribution system and permanent interconnection points must be conducted and a source water treatment recommendation based on those results must be submitted to the Department within 180 days after the end of the monitoring period in which the Lead action level was exceeded. The August 21, 2017 NONC required TWW to conduct the monitoring and submit the recommendation by December 30, 2017.
 - a. TWW failed to conduct source water sampling or to submit a source water treatment recommendation by the December 30, 2017 deadline.
 - b. On May 15, 2018, TWW submitted the source water treatment recommendation.

Lead Service Line Replacements

9. Pursuant to 40 C.F.R. § 141.84, water systems that have existing corrosion control treatment and exceed the Lead action level are required to replace annually at least 7% of LSLs in its water distribution system that it owns. The LSL replacement shall begin on the first day following the end of the monitoring period that the Lead action level was exceeded and proceed with at least 7% of LSLs replacement within one year. If the water system does not own any portion of the LSL, the system must offer to replace the owner's portion of the LSL at the owners' expense. A water system is not required to pay for any portion of LSL replacements they do not own.
10. Because TWW exceeded the Lead Action Level in the first half of 2017, TWW was required to start replacing 7% of the initial number of identified LSLs that they own on July 1, 2017 and to complete the LSL replacement within one year. For the portion of each LSL that is privately-owned, TWW is required to offer to replace the privately-owned portion of the LSL at the owner's cost. The deadline for the replacement was June 30, 2018.
11. A partial replacement of LSLs commenced on June 15, 2018, however TWW did not meet the June 30, 2018 deadline for replacing 7% of the LSLs for the 2017 Lead Action Level Exceedance.
12. Pursuant to 40 CFR 141.90(e), a water system that exceeds the Lead Action Level after the implementation of corrosion control and/or source water treatment is required to submit written documentation to the State identifying the initial number of LSLs in the distribution system and to provide a schedule for annually replacing a minimum of 7% of the initial number of LSLs in the distribution system. The August 21, 2017 NONC required TWW to immediately commence LSL replacements and submit an inventory and replacement schedule by October 21, 2017.

- a. TWW failed to provide the Department with a list of LSLs and a replacement schedule by the October 21, 2017 deadline.
13. Because TWW failed to provide the Department with the information required by Lead Action Level Exceedance by the deadlines, as discussed in paragraph 12 above, the Department issued a subsequent NONC on January 30, 2018. The NONC required TWW to submit the list of LSLs and a replacement schedule by February 15, 2018.
 - a. TWW submitted a draft LSL inventory on May 17, 2018 and continued to review old water service installation records.
 - b. An updated LSL inventory was provided on July 13, 2018.

AONOCAPA Penalty Assessment

14. The Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) on May 9, 2018 requiring the submittal of the LSL inventory and schedule by May 18, 2018. The AONOCAPA also required TWW to submit a source water treatment recommendation within 15 days. The AONOCAPA assessed a penalty of \$13,000.
 - a. On July 13, 2018, TWW provided an updated LSL inventory.
 - b. On June 7, 2018 TWW provided a construction schedule for the LSL replacements.
 - c. On May 15, 2018, TWW submitted a source water treatment recommendation.
 - d. On June 13, 2018, TWW submitted a request for a hearing on the AONOCAPA and associated \$13,000 penalty.
15. Based on the findings of the corrosion control study, the LSL inventory and replacement schedule provided by TWW and the Lead Action Level Exceedance for the 1st half of 2018, a new schedule has been derived to address the completion of these requirements as set forth below.
16. This ACO supersedes the AONOCAPA issued to TWW on May 9, 2018, and addresses all required public notice requirements for failure of TWW to replace 7% of the initial number of LSLs by the required deadline of June 30, 2018 and the additional requirements of the Lead Action Level Exceedance for the monitoring period of January 1, 2018 to June 30, 2018.
17. However, this ACO does not preclude TWW from liability or receiving additional enforcement actions for violating the June 30, 2018 deadline for the LSL replacement or

preclude TWW from any regulatory obligations associated with future violations, deficiencies or NONCs.

18. In order to resolve this matter without trial or adjudication, TWW has agreed to entry of this ACO and to be bound by its terms and conditions.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AND AGREED THAT:

A. ENFORCEMENT COMPLIANCE SCHEDULE

Corrosion Control Treatment Project

19. TWW shall submit to the Department a final Corrosion Control Treatment recommendation and schedule for its installation and operation by September 4, 2018.
20. TWW shall complete the final design for the Corrosion Control Treatment Project in accordance with the approved recommendation on or before January 15, 2019.
21. TWW shall apply for a Safe Drinking Water Permit through the Bureau of Water Systems Engineering to install the approved Corrosion Control Treatment Project on or before February 1, 2019.
22. TWW shall award a contract for the Corrosion Control Treatment Project in accordance with the Safe Drinking Water Permit issued by the Department on or before September 27, 2019.
23. If the Department requests any additional information to support the Corrosion Control Treatment recommendation or the Safe Drinking Water Permit application, TWW shall submit such information within 30 days of the Department's request.
24. TWW shall complete and operate the Corrosion Control Treatment in accordance with the Safe Drinking Water Permit issued by the Department and submit to the Department a letter certifying completion on or before June 1, 2020.
25. TWW will be required to re-evaluate its Corrosion Control Treatment after the completion of the Reservoir Covering Project on January 14, 2023 (See paragraph 56 below) and provide the Department with a Corrosion Control Treatment Recommendation for the entire distribution system on or before March 1, 2023.

Public Notification for Violations of the Lead and Copper Rule

26. TWW shall complete a Tier 2 Public Notification (“PN”) in accordance with 40 C.F.R. 141.201 for failure to replace 7% of the initial number of LSLs by the required deadline as follows.
- a. TWW shall submit to the Department a draft of the public notice by July 25, 2018 and TWW shall conform the notice in accordance with the Department’s revisions.
 - b. TWW shall conduct the PN using the approved notice by July 31, 2018.
 - c. TWW shall submit to the Department the following within ten (10) calendar days of completing the PN requirements:
 - i. A representative copy(s) of each completed PN that was distributed, posted, or otherwise made available to the persons served by the water system.
 - ii. A completed Public Notification Certification Form (Form BSDW 53) for the specified violation in accordance with 40 CFR 141.31(d).

Lead Service Line Replacement

27. TWW shall provide the Department with an updated LSL inventory and replacement schedule on or before July 25, 2018, which shall include the following information by municipality:
- a. The number of full LSLs; number of partial LSLs that contain lead on property owned by TWW; the number of partial LSLs that contain lead that is on property not owned by TWW; and,
 - b. For each category in paragraph 27(a) above, the number of property owners that have indicated: that they will participate in full LSL replacement; will not participate in full LSL replacement; have already replaced their portion of the LSL; and the number where no response was received to the LSL Replacement Project solicitation.
28. TWW shall provide the Department with the information required in paragraph 27 above, by January 1st and June 30th of each subsequent year that the LSL replacement program continues.
29. TWW shall complete public outreach for the LSL Replacement Project which shall include the following items:

- a. Creating and distributing a FAQ document along with a second letter inviting customers into the program with the final cost to the homeowner;
 - b. Developing and posting a website;
 - c. Hosting public education forums modeled around the June 20, 2018 forum conducted at Trenton City Hall, where TWW employees, including water treatment and distribution system staff, and experts are available to answer questions regarding lead in the drinking water and LSL Replacement Program; and
 - d. TWW shall submit to the Department a draft of items (a) and (b) for review by August 1, 2018. TWW shall modify each item in accordance with the Department's instructions. The final version of these items shall be distributed and posted by August 31, 2018. TWW shall send a letter offering to provide the public education forum to all municipalities serviced by TWW and provide a copy of the letter to the Department by August 31, 2018. The public education forums for any municipality that accepted TWW's offer to conduct the forums shall be held by December 31, 2018.
30. TWW shall provide the Department with its communication strategy that includes details on how TWW improved the customer service/ communications division to address all water inquiries from the public by August 3, 2018.
31. TWW shall provide the Department with a DRAFT plan detailing the criteria for prioritization and strategy for implementing the Lead Service Line Replacement Project on or before September 7, 2018 for Department review and approval.
 - a. TWW shall provide the Department with a FINAL plan detailing the strategy for implementing the Lead Service Line Replacement Project along with the FINAL Lead Service Line Replacement list on or before November 2, 2018.
32. TWW shall award the contract for the Lead Service Line Replacement Project in accordance with the FINAL LSL strategy on or before April 12, 2019.
33. TWW shall complete lead service line replacement for 7% of TWW's finalized initial number of lead service lines that are owned by TWW and offer to replace the privately-owned portion of the LSL at the owner's expense on or before December 31, 2019.
34. TWW shall complete the additional 7% of lead service line replacement of TWW's finalized initial number of lead service lines that are owned by TWW and offer to replace the privately-owned portion of the LSL at the owner's expense based on the reoccurring Lead Action Level Exceedance on or before July 31, 2020 for a total minimum of 14% replaced.

35. TWW shall continue to replace at least 7% of the LSLs that are owned by TWW and offer to replace the privately-owned portion of the LSL at the owner's expense annually until TWW has two consecutive monitoring periods from the Department approved sample locations without incurring a Lead Action Level Exceedances or TWW replaces all of its LSLs, whichever occurs first.

Public Education and Consumer Notices for Lead Action Level Exceedances

36. TWW shall conduct all Public Education requirements in accordance with 40 CFR 141.85 for the Lead Action Level Exceedance for the monitoring period of January 1, 2018 to June 30, 2018. The written Public Education in accordance with 40 CFR 141.85(a) provided to all customers must be issued in conjunction with Tier 2 PN, referenced in paragraph 26 above.
- a. TWW shall submit the draft initial Public Education materials to the Department for review and approval by July 25, 2018.
 - b. TWW shall modify the draft Public Education materials in accordance with the Department's comments and conduct the Public Education by July 31, 2018.
 - c. TWW shall submit to the Department the following within ten (10) calendar days of completing the Public Education requirements:
 - i. A representative copy(s) of each completed Public Education materials that was distributed, posted, or otherwise made available to the persons served by your water system.
 - ii. A completed Public Education Certification form (Form BSDW 55) that demonstrates that public education materials, meeting the content requirements in 40 CFR 141.85(a) and the delivery requirements in 40 CFR 141.85(b), were provided to the persons served by the TWW water system in accordance with 40 CFR 141.90(f).
37. TWW shall continue to conduct Public Education in accordance with 40 CFR 141.85 as long as TWW exceeds the Lead Action Level in any monitoring period.
38. TWW shall provide a Lead Consumer Notice providing the individual tap result to the persons served by the TWW water system at the specific sampling sites from which the sample was taken for the 1st half of 2018 monitoring period in accordance with 40 CFR 141.85(d) on or before July 31, 2018. TWW shall continue providing such notices as soon as possible but no later than within 30 days from when TWW learns of the sampling results for each subsequent tap sampling for Lead.
- a. This notice must address the following:
 - i. The results of lead tap water monitoring for the tap that was tested;
 - ii. An explanation of the health effects of lead;

- iii. The steps consumers can take to reduce exposure to lead in drinking water;
 - iv. Contact information for the water system; and
 - v. The notice must also provide the maximum contaminant level goal and the action level for lead and the definitions for these two terms from 40 CFR 141.153(c).
- b. TWW shall provide the Department with the certification form (Form BSDW 54) for the Lead Consumer Notice of Lead Tap Water Monitoring Results within 10 days of providing consumer notification requirements.

Source Water Monitoring and Treatment

39. TWW shall conduct source water monitoring for lead and copper from each entry point to the distribution system including all permanent active interconnections in accordance with 40 CFR 141.88 and shall submit to the Department a source water treatment recommendation (based on the results of the monitoring) in accordance with 40 CFR 141.83 on or before December 31, 2018.

Lead and Copper Tap Monitoring

40. TWW shall evaluate their lead and copper sampling pool to ensure proper tier and sample category classifications by August 10, 2018 prior to any sampling for the monitoring period of July 1, 2018- December 31, 2018 and provide the Department with the Lead and Copper Sample Location Spreadsheet (Form BWSE 18) for any changes on or before January 10, 2019.
- a. TWW shall evaluate their lead and copper sampling plan after each annual LSL Replacement Project and after each sampling period. TWW shall indicate the results of each evaluation by submitting the Lead and Copper Sample Location Spreadsheet (Form BWSE 18) to the Department within 10 days following the end of each monitoring period (January 10th and July 10th of each year).
41. Pursuant to 40 CFR 141.86, TWW shall conduct Lead and Copper Tap Monitoring every six months at the 100 sample site locations within the distribution system that have been approved by the Department until the Department authorizes less frequent monitoring. Within the first 10 days following the end of each applicable monitoring period TWW shall report Lead and Copper tap monitoring results to the Department (as required by 40 C.F.R. § 141.90(a). TWW shall notify the Department using the Lead and Copper Sample Site Change Form (Form BSDW 56) of any sample site changes between monitoring periods in accordance with 40 CFR 141.90(a)(1)(v) within 10 days following the end of each monitoring period.

42. TWW shall update its Lead and Copper Sampling Plan within 30 days of any significant changes to its water system, including but not limited to, changes in the system size class (as defined at 40 C.F.R. § 141.86), a change in any sampling sites, any changes in the source water, or significant alteration of the distribution system, interconnections, or other infrastructure. TWW shall keep a copy of the revised Lead and Copper Sampling Plan on site, and make it available for Department review upon request.

Water Quality Parameter (WQP) Monitoring

43. Pursuant to 40 C.F.R. 141.87, TWW shall continue WQP monitoring as follows:

- a. TWW shall conduct WQP monitoring at the entry points of the distribution system for the existing, installed Corrosion Control Treatment. Such monitoring shall measure for pH and alkalinity, sampled biweekly (once every 14 days).
 - b. TWW shall conduct WQP monitoring for pH and alkalinity within the distribution system at the 25 locations in the distribution system, which the Department approved on June 27, 2016, twice during every six-month monitoring period.
 - c. Pursuant to N.J.A.C. 7:10-5.4(a), the monitoring results obtained under (a) and (b) above shall be reported to the Department within 10 days following the end of the month in which the sample was collected.
 - d. Such monitoring shall continue unless the Department authorizes less frequent monitoring pursuant to 40 CFR 141.87.
44. TWW shall update its WQP Sampling Plan within 30 days of any significant changes in its water system, including but not limited to, system size class (as defined at 40 CFR 141.86), a change in any sampling sites, any changes in the source water, or significant alteration of the distribution system, interconnections, or other infrastructure. TWW shall keep a copy of the revised WQP Sampling Plan on site and make it available for review upon request.

Penalty Settlement

45. By execution of this ACO, TWW hereby withdraws, with prejudice, its request for an administrative hearing before the Office of Administrative Law regarding the AONOCAPA issued on May 9, 2018.
46. In settlement of the violations cited in the AONOCAPA issued on May 9, 2018, TWW shall pay a penalty of \$13,000 by check made payable to the "Treasurer, State of New Jersey" and shall be submitted along with the enclosed Enforcement Invoice to the address identified in paragraph 50 of this ACO by August 1, 2018.

47. TWW is responsible for taking whatever additional actions are necessary in order to comply with all applicable Federal, State and local permits as well as all applicable statutes, codes, rules, regulations and orders, including but not limited to the statutes and regulations cited herein. Furthermore, should TWW fail to comply with the requirements of the Enforcement Compliance Schedule included in this ACO, for reasons other than a valid Force Majeure defense, TWW must then comply with the public notification requirements for a Tier 2 violation. TWW shall conduct the public notice in accordance with any guidance or language required by the Department.

B. PROGRESS REPORTS

48. TWW shall submit **MONTHLY** progress reports to the Department at the address listed in paragraph 64 below until all remaining ACO provision are satisfied. Each progress report shall be submitted no later than the 15th day of the month, except when such day falls on a holiday or a weekend, in which case the progress report shall be submitted on the next available business day. Each progress report shall explain the status of TWW's compliance with this ACO and shall include, but not be limited to, the following:

- A. titled as "Lead and Copper ACO Monthly Progress Report" and include the specific month in the title;
- B. identification of site and reference to this ACO;
- B. status of permitting and planning approvals and any work at the site and progress to date;
- C. difficulties or problems encountered during reporting period and actions taken to rectify;
- D. activities planned for the next reporting period;
- E. required and actual completion date for each item required by this ACO;
- F. an explanation of any non-compliance with the compliance schedule; and
- G. evaluation of all corrective measures implemented to date.

C. STIPULATED PENALTIES

49. TWW shall pay stipulated penalties to the Department, as set forth below, upon the Department's written demand, for TWW's failure to comply with the Enforcement Compliance Schedule provisions of this ACO and/ or the progress report submission deadlines of this ACO unless the Department has notified TWW in writing that a stipulated penalty will not be assessed for violations of the Enforcement Compliance Schedule pursuant to the force majeure provisions of this ACO.

- a. For all violations of the Enforcement Compliance Schedule set forth in this ACO:

Calendar Days After Due Date

Stipulated Penalties

1st -7th calendar days of failure to comply with the schedule

\$100 per calendar day

8 th -14 th calendar days of failure to comply with the schedule	\$200 per calendar day
15 th plus calendar days of failure to comply with the schedule	\$500 per calendar day

b. For all violations of the progress report submission deadlines:

<u>Calendar Days After Due Date</u>	<u>Stipulated Penalties</u>
Each calendar day that TWW fails to submit the report	\$50 per calendar day

50. Within sixty (60) calendar days after TWW receipt of a written demand from the Department for stipulated penalties, TWW shall submit payment by suitable financial instrument, made payable to "Treasurer, State of New Jersey" in the amount of the stipulated penalties demanded by the Department pursuant to paragraph 49 above. Payment shall be mailed with the bottom portion of the Penalty Invoice Form supplied with the written demand. Payment shall be made to the following address:

New Jersey Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, New Jersey 08646-0417

51. If TWW fails to pay stipulated penalties pursuant to the preceding paragraphs, the Department may take action to collect same, including, but not limited to, instituting civil proceedings to collect such penalties pursuant to Rules Governing the Courts under R. 4:67 and R. 4:70, or assess civil administrative penalties for violations of this ACO.
52. The payment of stipulated penalties does not alter TWW's responsibility to complete all requirements of this ACO.

D. FORCE MAJEURE

53. If any event occurs which is beyond the control of TWW and which TWW believes will or may cause delay in the achievement of the compliance schedule provisions of this ACO, TWW shall notify the Department in writing within seven (7) calendar days of becoming aware of the delay or anticipated delay, as appropriate. In the notification, TWW shall reference this paragraph, describe the anticipated length of the delay, the precise cause or causes of the delay, and any measures taken or to be taken to minimize the delay. TWW shall take all necessary action to prevent or minimize any such delay.
54. The Department may adjust the deadlines in the Enforcement Compliance Schedule of this ACO for a period no longer than the delay if the Department finds that:

- A. TWW has complied with the notice requirements of the preceding paragraph;
 - B. any delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the control of TWW; and
 - C. TWW has taken all necessary actions to prevent or minimize the delay.
55. If the Department denies TWW's force majeure request, TWW may be subject to stipulated penalties and other civil and/or administrative enforcement actions. The burden of proving that any delay is caused by circumstances beyond the control of TWW and the length of any such delay attributable to those circumstances shall rest with TWW. Increases in the cost or expenses incurred by TWW in fulfilling the requirements of this ACO shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Contractor's breach shall not automatically constitute force majeure. No force majeure adjustments will be granted for failure to timely submit progress reports.

E. GENERAL PROVISIONS

56. On February 5, 2018, Trenton entered into an ACO that required it to improve the operations of TWW and to cover its finished water reservoir. Nothing herein affects the February 5, 2018 ACO.
57. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding, specifically including, but not limited to, proceedings pursuant to N.J.S.A. 13:1E-126 et seq., (commonly referred to as A-901).
58. This ACO settles and resolves only the issues related to this ACO, and is not a settlement of any other action rising from those violations. Nothing in this ACO shall resolve or preclude prosecution of criminal actions against TWW, if any.
59. This ACO shall be binding on TWW, its respective agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. Additionally, this ACO shall be binding on any TWW officials, employees, principals, directors, and officers to the extent that any such individual is a responsible corporate official within the meaning of N.J.S.A. 58:10A-31.
60. If TWW fails to pay the above penalty or fee in accordance with the terms and conditions of this ACO, then the AONOCAPA and fee shall be enforceable as a final order and the penalty and fee, along with costs and interest calculated pursuant to N.J. Court Rule 4:42, shall be immediately due and owing. The Department may bring a summary action in the Superior Court to collect such penalty or fee, or otherwise enforce this ACO, in a summary proceeding under R. 4:67-6, 4:70-1, N.J.S.A. 58:12A-1 et seq., or in any other manner as may be appropriate against TWW, its successors or assigns. This ACO shall be fully enforceable as a final administrative order in the New Jersey Superior Court upon

the filing of a summary action for compliance pursuant to N.J.S.A. 58:12A-1 et seq. and R. 4:67-6 and may also be enforced in the same manner as an Administrative Order issued by the Department pursuant to these same authorities.

61. TWW agrees not to contest the terms or conditions of this ACO except that TWW may contest the Department's interpretation or application of such terms or conditions in any action brought by the Department to enforce this ACO's provisions.
62. This ACO shall not relieve TWW from obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes, codes, rule, regulations and orders, including but not limited to the statutes and regulations cited herein.
63. No modification or waiver of this ACO shall be valid except by written amendment duly executed by TWW and the Department or by the Departments written modification pursuant to the force majeure provisions herein.
64. Unless otherwise specifically provided herein, TWW shall submit all documents required by this ACO, except penalty payments, to the Department by certified mail, return receipt requested or by hand delivery with an acknowledgment of receipt form for the Departments signature to:

A. Raimund Belonzi, Chief
Water Compliance & Enforcement
Central Regional Office
Mail Code 44-03
PO Box 420
Trenton, NJ 08625-0420

The date the Central Bureau of Water Compliance and Enforcement receives the certified mail or executes the acknowledgment will be the date the Department uses to determine TWW's compliance with this ACO.

65. Unless otherwise specifically provided herein, any communication made by the Department to TWW pursuant to this ACO shall be sent via email with a return receipt requested or by hand delivery to:

Utility Director, Dr. Shing-Fu Hsueh
319 East State St
Trenton, NJ 08608

66. TWW shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving TWW of its obligations under its permit(s), this ACO, the New Jersey Safe Drinking Water regulations, and/or the New Jersey Safe Drinking Water Act.

67. In addition to the Department's statutory and regulatory rights to enter and inspect, TWW shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.
68. Nothing in this ACO shall preclude the Department from taking enforcement action against TWW for matters not set forth in the findings of this ACO.
69. No obligations or penalties imposed by this ACO are intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding. All obligations and penalties are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment.
70. TWW shall give written notice of this ACO to any successor in interest thirty (30) calendar days prior to transfer of ownership or control of the facility or facilities which are the subject of this ACO and shall simultaneously notify the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership or control of TWW's facility. In addition, the parties agree that any contract, lease, deed or any other agreement that TWW enters into to convey the property/facility that is the subject of this ACO shall include a provision which states that the successor, assignee, tenant or purchaser has agreed to assume the obligations imposed by this ACO.
71. The Department reserves all statutory and common law rights to require TWW to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional measures should the Department determine that such measures are necessary.
72. Performance of the terms of this ACO by TWW is not conditioned in any way on the receipt by TWW of any federal or state funds.
73. TWW shall perform all work required by this ACO in accordance with prevailing professional standards.
74. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
75. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall not be affected thereby and each provision shall be valid and enforced to the fullest extent permitted by law. The Department does, however, retain the right to terminate the remainder of this ACO if, after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.
76. This ACO represents the entire integrated agreement between the Department and TWW on the matters contained herein.

77. The Department reserves the right to unilaterally terminate this ACO in the event TWW violates its terms and to take any additional enforcement action it deems necessary.
78. This ACO shall terminate upon receipt by TWW of written notice from the Department that all the requirements of this ACO have been satisfied. Termination of this ACO shall not relieve TWW of any liabilities for unpaid penalties as previously demanded by the Department pursuant to the terms and conditions of this ACO, nor shall it affect in any way the Department's rights and abilities to collect said unpaid penalties.
79. This ACO shall become effective upon the execution hereof by all parties.

City of Trenton

DATED: _____ BY: _____
NAME: Reed Gusciora
TITLE: Mayor
By this signature, I certify that I have full authority
to execute this document on behalf of TWW.

DATED: _____ New Jersey Department of Environmental Protection
BY: _____
NAME: A. Raimund Belonzi
TITLE: Chief of the Central Bureau
of Water Compliance and Enforcement
By this signature, I certify that I have full authority
to execute this document on behalf of NJDEP.