

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Pittsburgh Water and Sewer Authority	:	Violations of the Pennsylvania Safe
Penn Liberty Plaza 1	:	Drinking Water Act and the Rules and
1200 Penn Avenue	:	Regulations Promulgated Pursuant Thereto
Pittsburgh, PA 15222	:	Regarding the Lead and Copper Rule

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 17<sup>th</sup> day of NOVEMBER 2017, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (Department) and the Pittsburgh Water and Sewer Authority (PWSA).

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Pennsylvania Safe Drinking Water Act, Act of May 1, 1984, P.L. 206, *as amended*, 35 P.S. §§ 721.1-721.17 (Safe Drinking Water Act); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (Administrative Code); and the rules and regulations promulgated thereunder (Regulations).

B. PWSA is a municipal authority with a business address of Penn Liberty Plaza 1, 1200 Penn Avenue, Pittsburgh, Pennsylvania 15222. PWSA is a “person” and a “supplier of water,” as those terms are defined in Section 3 of the Safe Drinking Water Act, 35 P.S. § 721.3, and Section 1 of the Regulations, 25 Pa. Code § 109.1.

C. PWSA leases, operates, and is the permittee of a “public water system” and, more specifically, a “community water system,” as those terms are defined in Section 3 of the Safe Drinking Water Act, 35 P. S. § 721.3, and Section 1 of the Regulations, 25 Pa. Code § 109.1.

PWSA's public water system consists of water sources, storage facilities, treatment facilities and a distribution system (System). PWSA provides drinking water through the System to approximately 520,000 people in the Pittsburgh, Pennsylvania area, including approximately 250,000 residential customers. PWSA operates the System pursuant to multiple public water supply permits issued by the Department, and has been assigned Public Water System Identification Number 5020038. The City of Pittsburgh owns the System and leases it to PWSA.

***Failure to Treat as Permitted***

D. Section 7(a) of the Safe Drinking Water Act, 35 P.S. § 721.7(a), provides that it is unlawful for any person to substantially modify a community water system without first having received a written permit from the Department authorizing such modification. "Substantial modification" includes changes which may affect the quality of water served to the public or may be prejudicial to the public health and safety.

E. Section 109.1105(a) of the Regulations, 25 Pa. Code § 109.1105(a), provides that a person may not substantially modify corrosion control treatment facilities without having obtained appropriate permit approvals from the Department authorizing such modification. Section 109.501(b) of the Regulations, 25 Pa. Code § 109.501(b), provides that a person may not substantially modify a permitted public water system without first obtaining an amended construction permit from the Department pursuant to Section 109.503(b).

F. On July 26, 1995, the Department approved PWSA's corrosion control feasibility study, which identified the use of lime and soda ash as the optimal corrosion control treatment for PWSA's System. PWSA's use of optimal corrosion control treatment is required for compliance with the Regulations under 25 Pa. Code Chapter 109, Subchapter K, Lead and Copper, and was incorporated by reference in Public Water Supply Permit No. 465W001-T1-C1,

as amended, which sets forth the applicable water quality parameters (WQPs) to monitor the effectiveness of PWSA's corrosion control treatment.

G. In April of 2014, PWSA made substantial modification to its corrosion control treatment facilities and to its public water system by substituting caustic soda for soda ash as the primary chemical for corrosion control without first obtaining an amended construction permit from the Department, in violation of Sections 109.501(b) and 109.1105(a) of the Regulations, 25 Pa. Code §§ 109.501(b) and 109.1105(a), and Section 7(a) of the Safe Drinking Water Act, 35 P.S. § 721.7(a). PWSA has informed the Department that in early 2016, it reinstated the use of soda ash in the System.

H. On April 25, 2016, after learning of PWSA's unauthorized substantial modification to the corrosion control treatment facilities at its System, the Department issued an Administrative Order to PWSA directing the Authority to undertake a number of actions to, among other things: investigate lead levels within the System and evaluate impacts from PWSA's change in corrosion control chemicals; provide public notice to its consumers regarding the change of corrosion control chemicals and measures to evaluate impacts; conduct a feasibility study and develop recommendations for optimization of corrosion control treatment for the System; and submit a final report of the study to the Department with all data and PWSA's recommendations for optimal corrosion control protection within the System.

I. PWSA submitted a corrosion control study plan and schedule on May 24, 2016 pursuant to the Administrative Order. On June 24, 2016, the Department provided PWSA with its comments on the plan and conditionally approved the plan subject to PWSA's incorporation of the modifications discussed in the Department's comment letter dated June 24, 2016. PWSA subsequently submitted to the Department a revised version of the plan dated July 14, 2016,

which incorporated the Department's suggested modifications (Plan). Under the Plan, PWSA was to complete its corrosion control treatment feasibility study by the end of June 2017 and submit the final report and recommendations to the Department by July 30, 2017. As of the date of this Consent Order and Agreement, PWSA has not completed the corrosion control treatment feasibility study required under the Order to develop recommendations for optimal corrosion control within its System. Further, PWSA has not evaluated impacts to the System from its change of corrosion control chemicals as required under the Order. PWSA's failure to complete these activities by June 30, 2017 is in violation of the Department's Order, Section 13(a) of the Safe Drinking Water Act, 35 P.S. § 721.13(a), and Sections 109.4 and 109.1102(b)(3) of the Regulations, 25 Pa. Code §§ 109.4 and 109.1102(b)(3).

J. Section 703(a) of the Regulations, 25 Pa. Code § 109.703(a), provides that public water system facilities approved by written permit from the Department shall be operated in a manner consistent with the terms and conditions of the permit to achieve the level of treatment for which the facilities were designed.

K. From August 26, 2016 until July 27, 2017, PWSA failed to operate the treatment facilities in accordance with Permit No. 465W001-T1-C1, in violation of Section 109.703(a) of the Regulations, by failing to maintain and utilize equipment necessary to feed dry lime for raw water pH adjustment. The Department issued to the Authority Construction Permit No. 0216544 on April 18, 2017, for the installation of liquid lime (calcium hydroxide) as a replacement for the dry lime used for pH control in the raw water. The Department issued to the Authority Operation Permit No. 0217533 on July 10, 2017 to begin using the liquid lime feed system. On July 27, 2017, PWSA instituted liquid lime feed for the System.

### ***Lead Action Level Exceedances 2016***

L. PWSA is required, pursuant to the regulations, to conduct regular and specific lead and copper monitoring in order to evaluate the level of these substances in the public drinking water and the effectiveness of the System's corrosion controls.

M. Section 109.1102(a) of the Regulations, 25 Pa. Code § 109.1102(a), establishes an action level for lead at 0.015 mg/L, and provides that the action level is exceeded when the concentration in more than 10% of the tap water samples collected during the monitoring period (known as the 90<sup>th</sup> percentile amount) is greater than the action level.

N. PWSA conducted lead and copper monitoring of its System between January 1, 2016 and June 30, 2016 and between July 1, 2016 and December 31, 2016. The results showed a lead level of 0.022 mg/L and 0.018 mg/L, respectively, at the 90<sup>th</sup> percentile, which exceeded the action level for lead. PWSA conducted lead and copper monitoring of its System between January 1, 2017 and June 30, 2017. The results showed a lead level of 0.015 mg/L at the 90<sup>th</sup> percentile, which equaled but did not exceed the action level for lead.

O. Section 109.1107(d)(1) of the Regulations, 25 Pa. Code § 109.1107(d)(1), requires a system such as PWSA that exceeds the lead action level when conducting lead and copper tap monitoring to initiate lead service line replacement. The first year of lead service line replacement begins on the first day following the end of the monitoring period in which the lead action level was exceeded. For PWSA, this first year of required lead service line replacement began on July 1, 2016, and ended on June 30, 2017.

### ***Failure to Conduct System Materials Evaluation***

P. Section 109.1107(a)(6) of the Regulations, 25 Pa. Code § 109.1107(a)(6), requires that a water system that is required to initiate lead service line replacement submit to the

Department within the first three months of the first year of lead service line replacement: evidence that a materials evaluation of the system that meets the requirements of Section 109.1103(g)(1) of the Regulations, 25 Pa. Code § 109.1103(g)(1), has been conducted; a schedule for replacing at least 7% of the lead service lines identified in the materials evaluation; and the initial number of lead service lines in its distribution system and the portions owned by the system based on a materials evaluation.

Q. Section 109.1103(g)(1) of the Regulations, 25 Pa. Code § 109.1103(g)(1), requires water suppliers to complete a materials evaluation that includes the review of:

- (1) plumbing codes, permits and records in the files of the building departments of each municipality served by the system which indicate the plumbing materials that are installed within structures connected to the distribution system;
- (2) inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and
- (3) existing water quality information indicating locations that may be particularly susceptible to high lead or copper concentrations.

R. As a result of its exceedance of the lead action level, PWSA was required, under 25 Pa. Code § 109.1107(a)(6), to complete a materials evaluation by September 30, 2017 to determine the initial number of lead service lines in its system that would be subject to the 7% lead service line replacement requirements of Section 109.1107(d)(2) of the Regulations, 25 Pa. Code § 109.1107(d)(2), and a schedule for replacing at least 7% of the identified lead service lines. On September 30, 2016, PWSA submitted to the Department a “Lead Service Line Inventory Estimate,” stating to the Department that “PWSA does not currently have an accurate material inventory of the approximately 80,000 active service lines in their system.” PWSA requested that it be allowed to utilize its Lead Service Line Inventory Estimate to calculate the initial number of lead service line replacements it is required to perform, and the Department

approved this request for the first year of required line replacements only, which ended on June 30, 2017, but found the Lead Service Line Inventory Estimate to be insufficient as a complete materials evaluation. As of September 30, 2016, and since that date, PWSA has failed to submit a materials evaluation of the System that meets the requirements of Section 109.1103(g)(1) of the Regulations, 25 Pa. Code § 109.1103(g)(1), and a lead service line replacement schedule, in violation of Sections 109.1107(a)(6) and 109.1103(g)(1) of the Regulations, 25 Pa. Code §§ 109.1107(a)(6) and 109.1103(g)(1).

***Failure to Replace Lead Service Lines***

S. Section 109.1107(d)(2) of the Regulations, 25 Pa. Code § 109.1107(d)(2), requires water suppliers that exceed the lead action level to replace annually at least 7% of the initial number of lead service lines in place in their system at the beginning of the first year of replacement. Under Section 109.1107(d)(4) of the Regulations, 25 Pa. Code § 109.1107(d)(4), a water supplier is required to replace the system owned portion of the lead service line.

T. Within the “Lead Service Line Inventory Estimate” it submitted, PWSA estimated that the System had 19,152 lead service lines and therefore PWSA would need to replace at least 1,341 lead service lines prior to June 30, 2017.

U. On June 30, 2017, PWSA reported to the Department that only 415 lead service lines had been replaced of the required 1,341, in violation of Section 109.1107(d)(2) of the Regulations, 25 Pa. Code § 109.1107(d)(2).

***Failure to Meet Notice and Sampling Requirements***

V. Section 109.1107(d)(4) of the Regulations, 25 Pa. Code § 109.1107(d)(4), requires water suppliers conducting partial lead service line replacements to notify the owner of the other portion of the service line that the water supplier will replace the system-owned portion

of the line, and to offer to replace the privately owned portion of the service line at the owner's expense, unless prohibited by law. If the entire length of service line is not replaced at the same time, the water supplier must: (i) provide notice to the residents of all buildings served by the line at least 45 days prior to commencing partial line replacement with specific information regarding partial replacement and that the system will, at its own expense, collect a sample from each partially-replaced lead service line that is representative of the water in the service line for analysis of lead content within 72 hours after completion of the partial replacement of the service line; and (ii) collect the sample and report the results of the analysis to the owner and the residents served by the line within 3 business days of receiving the results.

W. During the period of 2016-2017, PWSA performed non-emergency partial lead service line replacements of the lines serving at least 60 residences without first providing the residents of these structures at least 45 days advance notice of the Authority's intention to perform a partial line replacement, in violation of Section 109.1107(d)(4) of the Regulations, 25 Pa. Code §109.1107(d)(4). For at least 149 residences, PWSA failed to collect a sample of the water from the structures for analysis within 72 hours of partial replacement of the lead service line, in violation of Section 109.1107(d)(4) of the Regulations, 25 Pa. Code §109.1107(d)(4).

X. The violations described in Paragraphs G, I, K, R, U and W, above, constitute a public nuisance under Section 12 of the Safe Drinking Water Act, 35 P.S. § 721.12, and subject PWSA to a claim for civil penalties under Section 13(g) of the Safe Drinking Water Act, 35 P.S. § 721.13(g).

Y. PWSA has informed the Department that, if and when PWSA meets the lead action level during two consecutive 6-month monitoring periods under the Lead and Copper



Rule Regulations, such that it no longer is required to conduct 7% annual lead service line replacement, PWSA intends to continue to replace lead service lines in accordance with a water main and service line replacement plan that PWSA will establish.

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by PWSA as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Safe Drinking Water Act, 35 P.S. § 721.5; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. PWSA agrees that the findings in Paragraphs A through Y are true and correct and, in any matter or proceeding involving PWSA and the Department, PWSA shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. Corrective Action. PWSA shall undertake and complete the following tasks pursuant to the following schedule:

a. For any structure for which PWSA completes a partial lead service line replacement (in which the portion of the lead service line not owned by PWSA remains in service for the structure), PWSA shall report this as a partial lead service line replacement as part of the reporting required by 25 Pa. Code § 109.1107(a)(6) and comply with the advance notification and follow-up testing requirements set forth in 25 Pa. Code § 109.1107(d)(4)(i)-(iii)

for every owner, resident and tenant of the structure. In addition, PWSA shall, for each owner, resident and tenant of the structure:

- i. provide (via door hanger notification) an additional advance notification not more than five (5) days and not less than seventy-two (72) hours prior to the initiation of work;
- ii. upon initiation of partial lead service line replacement, provide (by in-person delivery or by leaving at the front door of the residence) NSF-certified lead removal filters and replacement cartridges for six (6) months of use;
- iii. if initial follow-up testing of the water is not conducted because the resident failed to collect the sample, provide (via door hanger notification) a second notice for follow-up testing; and
- iv. if initial follow-up testing of water from the line shows that the lead level exceeds 0.015 mg/L, offer (via door hanger notification with self-addressed postage pre-paid mailer) NSF-certified replacement cartridges for an additional six (6) months of use and provide sample bottles for subsequent follow-up lead testing every three (3) months after partial lead service line replacement until: (a) the lead level in the water from the line is at or below 0.015 mg/L and the water from the line is at or below the pre-replacement lead level, if available; or (b) the resident has failed to return samples on two consecutive sampling opportunities.
- v. In the case of emergency water main and service line repairs or replacements, PWSA may, under 25 Pa. Code § 109.1107(d)(4)(i), provide a shorter time period for notification to affected residents. In the case of

emergencies, PWSA shall provide affected residents with as much advance notice as is possible prior to conducting a partial lead service line replacement. If no advance notice is possible, PWSA shall provide concurrent notification to affected residents at the time it performs the partial lead service line replacement. PWSA shall submit documentation to the Department within ten (10) days of the repair or replacement demonstrating the emergency circumstance, which documentation shall also include the date, address and description of repairs or replacements made. Provision of lead filters and cartridges and follow-up testing must still be completed according to the other requirements of Paragraph 3.a., above.

b. i. On or before December 31, 2017, PWSA shall submit to the Department an interim report of the results of the corrosion control treatment feasibility study required within the Plan submitted and approved under Paragraph 4.a. of the Administrative Order. PWSA shall submit a final report in accordance with 25 Pa. Code §§ 109.1102(b)(2)(ii)(A) and 109.1102(b)(3) on or before March 31, 2018. This paragraph supersedes the requirement for PWSA to submit the results and final report of its corrosion control feasibility study by July 30, 2017 as discussed in Paragraph I, above, and required under Paragraph 4.a. of the Administrative Order. All other requirements in Paragraphs 4.a. and 4.b. of the Administrative Order remain in full force and effect. In the event the Department notifies PWSA of any deficiencies in the study, PWSA shall fully address all such deficiencies within the time period requested by the Department until the study is deemed acceptable by the Department's written notice to PWSA.

ii. Within 90 days of the Department's written approval of PWSA's feasibility study, PWSA shall submit to the Department a complete and technically sufficient application for an amended construction permit to construct the optimal corrosion control treatment identified by PWSA's corrosion control study. PWSA shall fully address any deficiencies raised by the Department within the time frame requested.

iii. Within 180 days of the date the Department issues an amended construction permit to PWSA to modify the corrosion control treatment facilities for the System, PWSA shall complete construction of the modifications in accordance with the amended construction permit and submit to the Department a certification of construction to request an amended operation permit. PWSA shall begin operation of the modified corrosion control treatment facilities immediately upon issuance of an amended operation permit by the Department.

iv. Upon commencing operation of the modified corrosion control treatment facilities, PWSA shall conduct two consecutive 6-month periods of follow-up lead and copper tap monitoring at a minimum of one hundred (100) Tier 1 sites. During this time, PWSA also shall conduct monitoring of the applicable corrosion control treatment water quality parameter performance requirements (WQP) every 2 weeks at each entry point within the System and monthly at 25 locations within the distribution system.

v. Within 30 days of the end of the second period of follow-up tap monitoring required under Paragraph 3.b.iv., above, PWSA shall submit to the Department a request for designation of optimal corrosion control treatment

WQP. PWSA shall fully address any deficiencies raised by the Department within the time frame requested.

vi. Following the Department's designation of optimal corrosion control treatment WQP for PWSA's System, PWSA shall continue to conduct WQP monitoring every 2 weeks at each entry point and monthly at 25 locations within the distribution system for a period of one year.

c. i. On or before December 31, 2017, PWSA shall provide the Department with a Data Summary (in a spreadsheet or spreadsheets) from its GIS system utilizing all inspections and records currently in the possession of or accessible to PWSA, which includes scanned historical records (for City-owned service lines), curb box inspections completed through that date, and field studies completed through that date.

ii. On or before March 31, 2018, PWSA shall provide the Department with: (a) an updated materials evaluation containing all of the lead service line information from the Data Summary, as well as any additional lead service line information collected and processed subsequent to the Data Summary; and (b) a lead service line replacement schedule in conformance with the requirements of this Consent Order and Agreement.

iii. On or before December 31, 2020, PWSA shall provide a supplemental materials evaluation to the Department for all residential structures (single family and multi-family) connected to the system for which PWSA has not been able to confirm the absence of lead service lines, based on the sources of information listed in 25 Pa. Code § 109.1103(g)(1)(ii) and (iii), the results of

PWSA's inspection of service lines (including curb box inspections, if technically feasible, and other field studies, if technically feasible), or both. PWSA shall also identify the ownership of all portions of each line.

iv. On or before December 31, 2022, PWSA shall provide a supplemental materials evaluation to the Department for all structures connected to the system, based on the sources of information listed in 25 Pa. Code § 109.1103(g)(1)(ii) and (iii) and any updated information PWSA has developed from other sources.

v. In the event the Department notifies PWSA of any deficiencies in any of the Data Summary or materials evaluation submissions by PWSA under this paragraph, PWSA shall fully address all deficiencies within the time period requested by the Department until the Data Summary or materials evaluation is deemed acceptable by the Department.

d. On or before June 30, 2018, PWSA shall have, since July 1, 2016, replaced at least 1,341 lead service lines in place within the System. If PWSA determines that it has the legal authority and available funding to replace the privately owned portion of lead service lines when it replaces the City-owned portions, PWSA may submit a revised schedule for full line replacements, which the Department will consider in its sole discretion. PWSA waives any right that it may have to challenge the Department's decision in this regard.

e. Lead service line replacements:

i. Unless PWSA has met the 90<sup>th</sup> percentile lead action level during two consecutive rounds of 6-month monitoring by June 30, 2018, PWSA shall, on or before December 31, 2018, replace at least an additional 7% of the lead service

lines in place within the System, based upon the updated materials evaluation that PWSA is required to submit to the Department by March 31, 2018 and that has been accepted as compliant by the Department pursuant to Paragraph 3.c.

ii. Thereafter, unless and until PWSA has met the 90<sup>th</sup> percentile lead action level during two consecutive rounds of 6-month monitoring by June 30 of each calendar year, PWSA shall, on or before June 30<sup>th</sup> of the following calendar year, have replaced at least an additional 7% of the lead service lines within the System, based upon the most recently updated materials evaluation that has been accepted as compliant by the Department pursuant to Paragraph 3.c. To calculate the 7% amount, PWSA shall add the total number of lead service lines identified in the updated materials evaluation and the total number of lead service lines replaced by PWSA since July 1, 2016, and then calculate 7% of that combined total.

iii. If PWSA does meet the 90<sup>th</sup> percentile lead action level during two consecutive rounds of 6-month monitoring, but thereafter exceeds the 90<sup>th</sup> percentile lead action level, PWSA shall comply with all applicable requirements of the Regulations.

f. Every three (3) months, beginning on the date three (3) months after the date of this Consent Order and Agreement, PWSA shall provide to the Department a written report, detailing: the progress and status of PWSA's implementation of the Plan submitted pursuant to Paragraph 4.a. of the Administrative Order; repeat public notice and public education tasks; consumer tap notices; 72-hour partial line replacement sample results; and PWSA's compliance with the requirements of this Consent Order and Agreement, including but not

limited to any locations where PWSA has not complied with the provisions of Paragraph 3.a., above. Upon request by the Department, PWSA shall provide, within the time frame requested by the Department, information regarding lead service line replacement activities, including notification to residents; the results of the follow-up lead testing referenced in Paragraph 3.a.iv., above; outreach efforts to obtain follow-up samples; and the status of PWSA's provision of NSF-certified lead removal filters. The requirement for monthly progress reports set forth in Paragraph 4.a. of the Administrative Order is superseded by the reporting requirements contained herein. All other requirements in Paragraphs 4.a. and 4.b. of the Administrative Order remain in full force and effect.

g. PWSA shall provide repeat Tier 2 public notice to its customers within thirty (30) days following each six-month lead sampling event for which PWSA exceeds 0.015 mg/L of lead. This notice is in addition to the public education program required under Section 109.1104 of the Regulations, 25 Pa. Code § 109.1104. The notice shall include the 90<sup>th</sup> percentile value of the monitoring results, and any updates to the measures PWSA is undertaking under its approved Plan under Paragraph 4.a. of the Administrative Order, including PWSA's progress in conducting its investigation, determining the effect of changes to treatment methods, and developing recommendations for optimization of corrosion control within the System.

h. PWSA shall use adequately and appropriately qualified staff or consultants to perform the corrective actions required under this Consent Order and Agreement.

4. Civil Penalty Settlement.

a. Within thirty (30) days of execution of this Consent Order and Agreement, and subject to the provisions of Paragraphs 4.b. and 4.c., below, PWSA shall pay a civil penalty in the amount of TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000)



for the violations set forth in Paragraphs G, I, K, R, U and W, for the dates set forth above and no others. The payment shall be made by corporate check or the like made payable to the “Commonwealth of Pennsylvania – Safe Drinking Water Fund” and sent to Renee Diehl, Operations Sections Chief, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

b. Community Environmental Project. Up to ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000) of the civil penalty assessed in this Consent Order and Agreement may be paid by PWSA by performing a Community Environmental Project acceptable to the Department as described below. If the Department does not approve PWSA’s proposed Community Environmental Project within ninety (90) days of execution of this Consent Order and Agreement, then PWSA shall pay the unpaid portion of the civil penalty amount pursuant to Paragraph 4.a., above, within one hundred twenty (120) days of execution of this Consent Order and Agreement.

c. Within sixty (60) days of execution of this Consent Order and Agreement, PWSA may submit a detailed proposal for a Community Environmental Project that will result in the distribution, through a suitable third party administrator, of grant money or low-interest loan money to low income homeowners in the PWSA service system to assist these homeowners in their replacement of privately owned lead service lines on their property. No funds utilized under the Community Environmental Project shall be expended for administrative or oversight costs, nor used to fulfill any activity required of PWSA under law. Any funds that have not been utilized to fulfill the purpose of the approved Community Environmental Project within three (3) years from the execution of this Consent Order and Agreement shall be paid to the Department

as civil penalties pursuant to Paragraph 4.a., within sixty (60) days of termination of that time period.

d. PWSA shall not deduct any costs incurred in connection with or in any way associated with the Community Environmental Project described in Paragraph 4 for any tax purpose or otherwise obtain favorable tax treatment for those costs. If requested to do so by the Department, PWSA shall submit an affidavit of the official responsible for the financial affairs of PWSA certifying that PWSA has not deducted or otherwise obtained favorable tax treatment of any of the costs of the Community Environmental Project.

e. PWSA agrees that whenever it publicizes, in any way, the Community Environmental Project, it will state that the Project was undertaken as part of the settlement of an enforcement action with the Department.

f. PWSA shall submit to the Department an affidavit of the official responsible for overseeing the Project every ninety (90) days, beginning upon the approval by the Department of PWSA's proposed Community Environmental Project. The affidavit shall describe the dates and amounts of all funds allocated and distributed pursuant to the approved Project, including but not limited to the locations and funding amounts per location of funds used. PWSA shall provide the Department with any other documentation and information requested by the Department.

5. Stipulated Civil Penalties.

a. In the event PWSA fails to comply in a timely manner with the provisions of Paragraph 3 of this Consent Order and Agreement, PWSA shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount determined under the following schedule:

- i. For any violation of Paragraph 3.a., \$500 per violation per residence;
- ii. For any violation of Paragraphs 3.b. or 3.c., \$250 per day for each violation;
- iii. For any violation of Paragraphs 3.d. or 3.e., \$200 per month for each line not replaced;
- iv. For any violation of Paragraph 3.f., the Department reserves the right to determine and assess appropriate civil penalties based on the circumstances of the violation and the factors enumerated in Section 13(g) of the Safe Drinking Water Act;
- v. For any violation of Paragraph 3.g., \$250 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded as described in Paragraph 4 (Civil Penalty Settlement), above.

c. Any payment under this paragraph shall neither waive PWSA's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel PWSA's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only PWSA's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

6. Remedies for Failure to Complete Community Environmental Project. In the event that PWSA fails to complete its obligations under the approved Community Environmental

Project referred to in Paragraph 4, PWSA shall pay an additional stipulated penalty in the amount of \$5,000. In this event, or if PWSA's operation of the System terminates or is transferred to another entity during the term of the Community Environmental Project, PWSA shall within fifteen (15) days of receipt of written notification from the Department, pay all funds that have not been utilized to fulfill the purpose of the approved Community Environmental Project to the Department as civil penalties pursuant to Paragraph 4.a.

7. Additional Remedies.

a. In the event PWSA fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 5 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

8. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. PWSA reserves the right to challenge any action which the Department may take to require those measures.

9. Liability of PWSA. PWSA shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Except as provided in Paragraph 10.c., PWSA also shall be liable for

any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

10. Transfer of Site.

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Water System or any part thereof.

b. If PWSA intends to transfer any legal or equitable interest in the Water System which is affected by this Consent Order and Agreement, PWSA shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Southwest Regional Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate PWSA's duties and obligations under this Consent Order and Agreement upon transfer of the PWSA System or any part thereof. PWSA waives any right that it may have to challenge the Department's decision in this regard.

11. Department Consent to Transfer, Assignment or Termination of Lease. During the term of this Consent Order and Agreement, PWSA shall not approve or consent to the transfer, assignment or termination of its lease and operation of the System unless the intended new owner and/or operator of the water system first enters into a consent order and agreement with the Department in which it obligates itself to timely complete all of PWSA's obligations that are required under this Consent Order and Agreement.

12. Correspondence with Department. All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Renee Diehl, Operations Section Chief  
Department of Environmental Protection  
Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, Pennsylvania 15222-4745  
Telephone: 412.442.4210 Facsimile: 412.442.4242

13. Correspondence with PWSA. All correspondence with PWSA concerning this Consent Order and Agreement shall be addressed to:

Robert Weimar, Interim Executive Director  
Pittsburgh Water and Sewer Authority  
Penn Liberty Plaza 1  
1200 Penn Avenue  
Pittsburgh, PA 15222  
Telephone: 412-255-2579

PWSA shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

14. Force Majeure.

a. In the event that PWSA is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstance beyond the Authority's control and which PWSA, by the exercise of all reasonable diligence, is unable to prevent, then PWSA may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond PWSA's

control. PWSA's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

b. PWSA shall only be entitled to the benefits of this paragraph if PWSA notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by PWSA to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. PWSA's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by PWSA and other information available to the Department. In any subsequent litigation, PWSA shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

15. Severability. The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

16. Entire Agreement. This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior

drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

17. Attorney Fees. The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

18. Modifications. No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

19. Titles. A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

20. Decisions Under Consent Order. Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which PWSA may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

21. Dispute Resolution.

a. PWSA may initiate dispute resolution under this paragraph, in response to any decision required of the Department under Paragraphs 3.a., 3.b., or 3.c.

b. To initiate dispute resolution, PWSA shall provide written notice to the Department within ten (10) days of the decision in dispute. PWSA shall have an additional ten days to provide the Department with a written list of objections to the decision in dispute, the



relevant facts, analysis and opinions and other supporting data ("Statement of Position"). The Department shall have twenty (20) days to provide its Statement of Position.

c. Within the twenty (20) day period following receipt of the Department's Statement of Position, the Safe Drinking Water Program Manager and PWSA's representative shall confer in an attempt to resolve the dispute. In the event the parties are unable to resolve the dispute within this period, the Statements of Position shall be provided to the Department's Southwest Regional Director to issue a final decision resolving the dispute.

d. During the pendency of the dispute resolution procedures set forth in subparagraphs b. and c., any obligation to be performed under this Consent Order and Agreement which is the subject of such dispute and any associated activities whose performance is directly dependent upon the resolution of the dispute shall be postponed for a period of time not to exceed the actual time taken to resolve the dispute pursuant to subparagraphs b. and c. or as otherwise agreed by the parties. All other obligations and activities shall be completed in accordance with the terms of this Consent Order and Agreement.

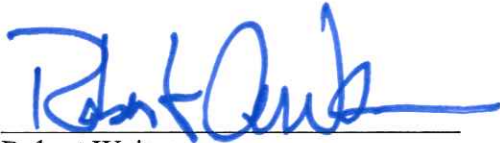
e. Any time period for dispute resolution set forth herein may be extended by written agreement of the parties.

22. Termination. The obligations of this Consent Order and Agreement shall terminate when the Department determines in writing that PWSA has complied with the requirements of Paragraphs 3.a. – 3.d., 3.e.i., 3.e.ii., 4, 5, and 6, and has met the lead action level during two consecutive 6-month monitoring periods.

23. Resolution. Attached hereto as Appendix A is a resolution of the Board of PWSA authorizing its signatories below to enter into this Consent Order and Agreement on its behalf.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of PWSA certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of PWSA; that PWSA consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that PWSA hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by PWSA's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR PITTSBURGH WATER AND SEWER AUTHORITY:



Robert Weimar  
Interim Executive Director  
Pittsburgh Water and Sewer Authority

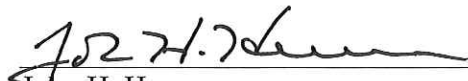


David Ries  
Attorney for Pittsburgh Water  
and Sewer Authority

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:



Alan Eichler  
Environmental Program Manager  
Bureau of Safe Drinking Water



John H. Herman  
Regional Counsel

Gail Guenther  
Assistant Counsel  
Southwest Office of Chief Counsel

**RESOLUTION NO. 222 OF 2017**

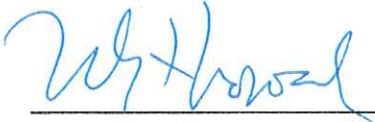
**THE PITTSBURGH WATER AND SEWER AUTHORITY  
Allegheny County, Pennsylvania**

The undersigned, an authorized representative of The Pittsburgh Water and Sewer Authority, hereby certifies that at a meeting held on the 17<sup>th</sup> day of November, 2017, after due notice, at which a quorum was present, the "Authority Board" unanimously adopted the following Resolution:

RESOLVED, that The Pittsburgh Water and Sewer Authority (the "Governing Body") shall be, and the same hereby is authorized to execute and enter into the Consent Order and Agreement with the Pennsylvania Department of Environmental Protection. Appropriate officers of the Governing Body are hereby authorized to execute all certifications and documentation required in connection with the Amendment.

I hereby certify that the above Resolution is in full force and effect as of the 17th day of November, 2017.

WITNESS:

  
\_\_\_\_\_

  
\_\_\_\_\_  
Debbie Lestitian  
Chair, PWSA Board